

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN )  
INTERGOVERNMENTAL AGREEMENT )  
BETWEEN MULTNOMAH COUNTY AND ) Resolution No. 93-1877  
METRO REGARDING TRANSFER OF )  
REGIONAL PARKS, NATURAL AREAS, ) Presented by Executive Officer,  
GOLF COURSES, CEMETERIES, AND ) Rena Cusma  
TRADE/SPECTATOR FACILITIES )  
PRESENTLY OWNED AND OPERATED BY )  
MULTNOMAH COUNTY TO METRO )

WHEREAS, Multnomah County and Metro agreed to develop an Intergovernmental agreement that would transfer County park facilities, natural areas, and trade/spectator facilities to Metro; and

WHEREAS, a negotiating team representing the Multnomah County Board of Commissioners, the Metro Council, and the Executive Officer have negotiated the details of this Intergovernmental Agreement; and

WHEREAS, Metro has the authority under the 1992 Metro Charter to operate public exhibition, cultural, recreational facilities, and a system of parks and open spaces of metropolitan concern; and


WHEREAS, this first phase of consolidation shall be of limited duration pending full consolidation, including transfer of ownership of the county facilities to Metro, with the exception of any Neighborhood Parks; and

WHEREAS, adequate financial revenues are available from the Multnomah County Recreation fund to support the transferred programs; now, therefore,

BE IT RESOLVED,

That the Metro Council approves and authorizes the Executive Officer to execute the attached Intergovernmental Agreement to be effective January 1, 1994.

ADOPTED by the Metro Council this 9th day of December, 1993.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

**INTERGOVERNMENTAL AGREEMENT**

Intergovernmental Agreement Regarding Transfer of Regional Parks,  
Natural Areas, Golf Courses, Cemeteries, and Trade/Spectator Facilities  
Presently Owned and Operated by Multnomah County to Metro.

This Agreement dated as of December 9, 1993, is between Metro (METRO); and Multnomah County (COUNTY).

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## **RECITALS:**

1. METRO and COUNTY were two key participants in the preparation of the Metropolitan Greenspaces Master Plan adopted July 1992. The November 1992 bond measure to fund METRO acquisition of Greenspaces raised the issue of METRO's operations and maintenance capability. Consolidation of COUNTY Parks and METRO Greenspaces personnel and policy implementation creates METRO operations and maintenance capability with experienced COUNTY personnel.
2. The COUNTY and METRO have been involved in extensive negotiations regarding transfer of regional parks, recreational facilities, natural areas, golf courses, cemeteries, and trade/spectator facilities presently owned and operated by COUNTY to METRO.
3. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of transfer and consolidation; which expressed the intention of the COUNTY and METRO to approve a formal intergovernmental agreement consistent with those principles; and which anticipated that the formal intergovernmental agreement would be prepared and approved as soon as possible.
4. The Metro Council and the County Commission approved the Memorandum of Understanding.
5. This Agreement has been prepared to implement the Memorandum of Understanding.

## **SECTION 1**

### **DEFINITIONS**

In this Agreement, the following terms shall have the following meanings unless the context indicates otherwise:

"Council" or "Metro Council" means the Metro Council provided for in the 1992 Metro Charter, or the lawful successor thereto.

"County" means Multnomah County, Oregon, or the lawful successor thereto.

"County Chair" means the duly elected Chair of the Multnomah County Board of Commissioners, or the lawful successor thereto.

"County Commission" means the Multnomah County Board of Commissioners, or the lawful successor thereto.

"County Facilities" means all park facilities (except Vance Park) and natural areas currently owned or operated by COUNTY, including but not limited to Glendoveer Golf Course; Pioneer Cemeteries; the Multnomah County Exposition Center (EXPO), including any COUNTY-owned property appurtenant to EXPO; and any new acquisitions of natural areas by COUNTY. A complete list of all properties contemplated for transfer is attached and incorporated herein as Exhibit 1.

"EXPO" means the Multnomah County Exposition Center, including any COUNTY-owned property appurtenant thereto.

"Metro" means Metro, or the lawful successor thereto.

"Metro ERC" means the Metropolitan Exposition-Recreation Commission.

"Metro ERC Facilities" means the Oregon Convention Center and other convention, trade, or spectator facilities owned by Metro or operated by Metro ERC.

"Metro Executive Officer" or "Executive Officer" means the duly elected Metro Executive Officer provided for in the 1992 Metro Charter, or the lawful successor thereto.

"Neighborhood Parks" means those of the County Facilities which are identified as such in Exhibit 1, except Vance Park.

"Other Facilities" means present and future regional parks, natural areas, golf courses, cemeteries, and trade, or spectator facilities other than the County Facilities and current Metro and Metro ERC Facilities.

## SECTION 2

### PURPOSE

The purpose of this Agreement is to provide for a two-phase consolidation of operation, management, and ownership of all regional park facilities, regional natural areas, and trade/spectator facilities presently owned and operated by COUNTY, including but not limited to Glendoveer Golf Course, Pioneer Cemeteries, and EXPO, into the mix of natural spaces and trade/spectator facilities currently owned or operated by METRO, and to provide for METRO operation and management of any Neighborhood Parks operated by COUNTY on a limited basis. The first phase of consolidation shall be of limited duration pending full consolidation, including transfer of ownership of the County Facilities to METRO, with the exception of any Neighborhood Parks. The first phase of consolidation is a management and operation agreement for all County Facilities managed and operated within the current Multnomah County Recreation Fund. It is understood between COUNTY and METRO that

the second phase of consolidation, including transfer of ownership, is of critical importance, and that PHASE I consolidation of operation and management is merely intended to promote a smooth and harmonious transfer of those County Facilities to METRO that are of "metropolitan concern" or otherwise within METRO's authority.

This Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and COUNTY. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever.

### SECTION 3

#### TERMS OF TRANSFER

##### A. Transfer of Operation and Management

Effective January 1, 1994, COUNTY hereby transfers all operational and management rights and responsibilities for the following programs, activities, properties and/or facilities currently budgeted in the Multnomah County Recreation Fund, along with all funds and revenues related to these programs, to METRO:

1. All park facilities (except Vance Park) and natural areas currently owned or operated by COUNTY;
2. Glendoveer Golf Course;
3. Pioneer Cemeteries;
4. EXPO; and
5. Any new acquisitions of regional natural areas by COUNTY subsequent to the date of this Agreement shall be transferred to METRO under the same terms and conditions set out in this Agreement for the other COUNTY facilities.

A complete list of all properties hereby affected is attached and incorporated herein as Exhibit 1.

These programs, activities, and facilities shall henceforth be referred to in this Agreement as the County Facilities, but, all said facilities other than any Neighborhood Parks will be identified exclusively as Metro-operated Facilities to the public and to users of those facilities, effective January 1, 1994. METRO shall have full power and authority to organize, manage, and operate the County Facilities as METRO deems appropriate.

**B. Maintenance of Effort**

METRO agrees to exert its best efforts to operate and maintain the EXPO, cemeteries, parks, recreation facilities, natural areas, established cultural and educational programs, natural and cultural resources, and all related appurtenances being transferred as part of this Agreement, in a manner which assures sustainable and continuous public use, safety and enjoyment at a level at least equal to that maintained by the COUNTY prior to the transfer, provided that sufficient funds remain available for such purposes. In the event of a shortfall requiring program curtailment, METRO and COUNTY shall meet to discuss available options. Provided, however, that METRO may suspend swimming or other water-related activities in Blue Lake Park whenever METRO determines that such a suspension would be prudent for health or safety reasons.

**C. Real and Personal Property**

1. Effective January 1, 1994, COUNTY hereby transfers to METRO the right to beneficial use of all real and personal property comprising the County Facilities, including any personal property associated with the management or operation of the County Facilities. COUNTY shall not take any action with regard to the real property or personal property comprising the County Facilities that would interfere with management and operation of the County Facilities by METRO. During PHASE I of this Agreement, METRO will not make any significant structural or functional changes to the County Facilities without first allowing the Transition Team to discuss the changes. During PHASE I of this Agreement, METRO shall list COUNTY as an additional insured on METRO property policies with respect to the County Facilities.

2. During PHASE I of this Agreement, COUNTY shall provide Multnomah County Fleet and Electronics service to provide maintenance and upkeep on all equipment associated with the County Facilities. COUNTY shall provide a standard of maintenance and upkeep at least equal to the standard previously kept by COUNTY for said equipment. COUNTY shall bill METRO for the cost of such services, in the same manner and at the same rate as charged to other COUNTY areas for comparable services. At METRO's option, such services and billing shall continue during PHASE II consolidation.

**D. Contracts and Licenses**

1. Effective January 1, 1994, COUNTY shall assign to METRO, all contracts, permits, rental agreements, and licenses to which COUNTY is a party and which are assignable without the consent of other parties. After January 1, 1994, these contracts, permits, rental agreements, and licenses shall be subject to management and control by METRO, or Metro ERC, as Metro shall designate.

2. Effective January 1, 1994, COUNTY shall assign to METRO all contracts, permits, rental agreements, and licenses to which COUNTY is a party, the assignment to be

effective January 1, 1994, or upon obtaining the consent of the other parties thereto, whichever occurs later. Upon the effective date of assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of METRO, or Metro ERC, as Metro shall designate. METRO shall perform all obligations of COUNTY as set forth in the assigned contracts and shall not permit any contract to be defaulted by action or inaction.

E. Multnomah County Recreation Fund

Effective January 1, 1994, COUNTY will transfer to METRO all funds less current obligations contained within the Multnomah County Recreation Fund generated by, or attributed to the County Facilities. Said funds shall include all revenues attributable to the County Facilities, now or in the future, from whatever source. COUNTY represents, and warrants, that all funds currently contained within the Multnomah County Recreation Fund are properly contained within that fund in full compliance with all applicable laws and regulations. By way of example and not as a limitation, transfer of funds under this Agreement shall include the current balances of dedicated trust funds or accounts held by the Parks Division, including the Blue Lake Outdoor Performing Arts Stage Fund, the Oxbow Park Nature Center Fund, the Willamina Farmer Trust Fund, and the Tibbetts Flower Fund, provided, however, that those funds shall be used exclusively for their dedicated purposes, and in accordance with the terms of any applicable trust documents. Metro shall maintain any special trust funds or accounts in accordance with the requirements of all applicable public budgeting laws.

1. Retention for Incurred Expenses. COUNTY shall retain a maximum of \$100,000 to pay expenses incurred prior to January 1, 1994, but not yet paid. By March 1, 1994, COUNTY shall provide METRO with an accounting of all expenses paid and shall forward any remaining balance to METRO. COUNTY acknowledges that liabilities for Multnomah County Recreation Fund expenditures incurred through December 31, 1993, remain the responsibility of the COUNTY. Payroll, invoices and bills for goods and services incurred prior to January 1, 1994, and consistent with the existing Recreation Fund Budget and Special Trust Fund or account agreements shall be forwarded to the COUNTY for payment. COUNTY agrees to promptly pay all such liabilities and expenses incurred prior to January 1, 1994. COUNTY agrees to hold METRO harmless from liability for Recreation Fund, Special Trust Fund and account expenditures incurred through December 31, 1993. Any expenses incurred prior to January 1, 1994, are to be paid out of the \$100,000 retained to pay such expenses. It is agreed that should an expense incurred prior to January 1, 1994, or a revenue earned or received at any time, be received after the final transfer of funds, the COUNTY will forward the expense or revenue to METRO within 15 days of receipt of any such times and METRO will be responsible to take appropriate action.

2. Natural Areas Acquisition and Protection Fund. The parties agree that maintaining the purpose and integrity of the County's Natural Areas Acquisition and Protection Fund is of the highest importance. The parties agree that the Natural Areas

Acquisition and Protection Fund shall be maintained for its stated purpose, in accordance with Multnomah County Resolution No. 93-338 (attached as Exhibit 2). It is agreed by the parties that the proceeds from any further sales of the property known generically as "the Edgefield property" or "Edgefield Manor" shall be placed within the Natural Areas Acquisition and Protection Fund, consistent with Multnomah County Resolution No. 93-338.

3. Expenditures from Natural Areas Acquisition and Protection Fund. The COUNTY and METRO will cooperate to develop an annual budget proposal for the Natural Areas Fund, to be presented and adopted by the Board of County Commissioners in their annual budget process. The budget approved by the Board of County Commissioners for the Natural Areas Fund shall be consistent with purposes and priorities as identified in the Multnomah County Natural Areas Protection and Management Plan. The COUNTY shall fully reimburse METRO for expenses incurred by METRO for those portions of the Natural Areas Fund budget to be implemented by METRO, including compensation and benefits for COUNTY personnel transferred to METRO whose compensation is currently budgeted out of the fund. Prior to the expenditure of funds for acquisition of land or other easements, METRO shall consult with the COUNTY and receive Board of County Commissioners approval of the acquisition. The Board of County Commissioners shall not withhold approval of acquisitions and expenditures which are consistent with the purposes contained in the Natural Areas Protection and Management Plan.

4. Capital Improvements/ADA Compliance. The parties agree that the COUNTY shall complete and carry out any currently budgeted capital improvements and/or ADA compliance projects planned for the COUNTY facilities, regardless of whether funds for such improvements/projects are budgeted in the Multnomah County Recreation Fund or elsewhere in the COUNTY's budget. COUNTY shall complete these improvements/projects by transferring the appropriate budgeted funds to Metro upon the effective date of this Agreement, unless the Transition Team agrees upon an alternative method of completion.

F. Metro Regional Parks/Expo Fund

1. Effective no later than January 1, 1994, METRO shall establish a new recreation fund as part of the METRO budget, known as the Metro Regional Parks/Expo Fund. All funds formerly in the Multnomah County Recreation Fund shall be transferred to the Metro Regional Parks/Expo Fund. All revenues attributable to the County Facilities, from whatever source, shall be placed within the Metro Regional Parks/Expo Fund. The Metro Regional Parks/Expo Fund shall be spent only on the operation, management, marketing, maintenance, and improvement of the County Facilities, which shall include any overhead or central services charges which METRO attributes to the County Facilities for provision of services by METRO or Metro ERC.

2. In no event shall METRO be required to fund and/or subsidize the County Facilities or the Metro Regional Parks/Expo Fund with funds from any other METRO program, activity, or fund, provided, however, that METRO may, in its sole discretion, and,



excepting any Neighborhood Parks, transfer METRO funds to the County Facilities or the Metro Regional Parks/Expo Fund, whenever it determines that it is in the regional interest to do so. In the event that METRO does transfer METRO funds to the County Facilities or the Metro Regional Parks/Expo Fund, METRO may transfer such funds back to METRO whenever and in such a manner as it sees fit. METRO may charge a reasonable rate of interest for METRO funds transferred to the County Facilities or the Metro Regional Parks/Expo Fund. METRO may transfer funds from one COUNTY facility to another as it sees fit. However, no funds from any other METRO program, activity or fund shall be used for maintenance and operation of any Neighborhood Parks identified in Exhibit 1.

**G. Money Transfers, Accounting, and Auditing**

1. Receivables. COUNTY hereby assigns to METRO as of January 1, 1994, all COUNTY accounts receivable and other receivables existing as of that date or thereafter accruing which pertain to the County Facilities.

2. Adjustments Following Audit. A portion of COUNTY's official independent audit for FY 1993-94 shall cover all COUNTY operations for the entire period ending December 31, 1993. On completion and acceptance by COUNTY of the portion of the official COUNTY independent audit covering COUNTY for FY 1993-94, adjustment shall be made in the amounts of any funds and receivables transferred pursuant to this Agreement as indicated by the audit so as to bring the amounts retained by COUNTY with respect to any funds applicable to the County Facilities to zero. In the event of excess transfers to METRO, METRO shall refund the amount of the excess to COUNTY as appropriate. In the event of deficient transfers to METRO, COUNTY shall transfer the amount of the deficiency to METRO for use as provided herein. COUNTY shall encourage its auditors to complete the portion of the audit covering the County Facilities as quickly as possible. Any dispute between the parties regarding funds to be transferred shall be resolved pursuant to Section 5 of this Agreement.

3. Event and Concession Bank Accounts. To the extent that COUNTY maintains in its name, or in the name of any of the County Facilities, bank accounts into which COUNTY deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to COUNTY from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and concessionaires, on January 1, 1994, ownership of the accounts shall be transferred to METRO, or the accounts may be closed and the account balances transferred to new accounts opened by METRO or Metro ERC, or some comparable change may be made, as determined by METRO. COUNTY shall execute whatever documents are necessary to accomplish the change.

4. Financial Reporting. For financial reporting purposes the parties agree that METRO will be the primary government for financial reporting of the activities covered under this Agreement and transferred to METRO as defined in Governmental Accounting

Standards Board (GASB) Statement 14. While only EXPO is currently contemplated for management by the Metro ERC component unit of METRO, to avoid future uncertainty regarding the status of any functions transferred, the following states the facts of the transfer (as outlined in GASB Statement 14):

- (a) METRO appoints all members of Metro ERC, pursuant and subject to Chapter 6 of the Metro Code.
- (b) METRO is able to impose its will, as defined in GASB Statement 14, on Metro ERC for operations of EXPO, which includes budgetary, financial, and other management controls.
- (c) Upon the date of transfer, METRO is solely responsible for any financial benefit or burden from the operations and management of the EXPO by Metro ERC.
- (d) All functions transferred to METRO as part of the Agreement which are not managed by Metro ERC are not legally separate entities and METRO holds all the corporate powers as defined in GASB Statement 14, paragraph 15. As such, these functions are to be reported as part of METRO'S primary governmental financial activity.

#### H. EXPO/Multnomah County Fair

1. EXPO shall be managed and operated by METRO by and through its Metropolitan Exposition-Recreation Commission, subject to whatever changes the Metro Council may from time to time make in the management, operation, or existence of its Metropolitan Exposition-Recreation Commission.

2. METRO shall assume responsibility for the EXPO master plan process begun by COUNTY. This shall include implementation of the "Portland Exposition Center Facilities Plan," prepared by COUNTY, to the extent feasible as determined by further studies, further METRO/Metro ERC planning efforts, and by the availability of resources for implementation.

3. COUNTY represents and warrants to METRO (a) that the current arrangements surrounding the Multnomah County Fair, the Multnomah County Fair Board, and Multnomah County, which, inter alia, require the Fair to pay a fee for the use of EXPO, are lawful, proper, and in full compliance with the provisions of any agreements, deeds, duties, or contracts, express or implied, which exist regarding the Fair or EXPO, and (b) that Multnomah County has full authority to enter into and carry out this Intergovernmental Agreement insofar as EXPO, the Multnomah County Fair, and all other County Facilities are concerned. The provisions of Section 3(M)(1) shall include any claims made by or on behalf of the Multnomah County Fair, the Multnomah County Fair Board, any users of the Fair, or

any parties claiming contractual rights, including claims of any third party beneficiaries, with respect to EXPO, the Fair or the COUNTY's past, present, or future actions with respect to EXPO or the Fair. The Multnomah County Fair shall continue to be the sole and exclusive responsibility of COUNTY. METRO shall continue to make EXPO space and expertise available for the Multnomah County Fair, through a contract(s) with the Multnomah County Fair Board. COUNTY may specify the dates for the fair. COUNTY shall give METRO reasonable notice of such dates consistent with normal business practice.

4. Both the COUNTY and METRO recognize the value of the County Fair to the community and are committed to the future success of the County Fair. Based on the Fair's historical relationship to EXPO, during and for the calendar years of 1994 and 1995 METRO agrees to the following: (a) METRO shall not charge the Fair rent for the use of EXPO; (b) the Fair may maintain its current storage area at EXPO in a manner substantially similar to existing historical practice; (c) METRO shall provide the Fair with staff support services for set-up, breakdown, facility maintenance, and consulting by permanent full-time METRO or Metro ERC employees at no charge, but will pass through any out-of-pocket expenses incurred in connection with the Fair, in accordance with standard Metro ERC policies and practices; (d) Metro Parks staff shall provide greenhouse space, labor, and planting to the Fair at no charge, in a manner substantially similar to existing historical practice; (e) in the event that COUNTY hires a Fair Manager, METRO shall provide office space at EXPO without rental charge; (f) during the Fair any net concession or parking revenue at the Fair shall be considered revenues of the Fair. In the event that the COUNTY hires a Fair Manager, or other personnel to assist with the Fair, those positions shall be the exclusive responsibility of the COUNTY, and shall be funded in all respects by the COUNTY. Continuation of any special considerations granted to the Fair in this paragraph shall be jointly reviewed by the COUNTY and METRO within the framework of negotiations toward PHASE II transfer of ownership.

I. Park Facilities, Cemeteries, Natural Areas, and Glendoveer Golf Course

All park facilities, natural areas, cemeteries, and golf courses transferred pursuant to this Agreement shall be incorporated into a new Metro Parks and Greenspaces Department, to be established, operated, and managed by METRO; provided, however, that these facilities may be combined for operations purposes with other programs, projects, or operations, as determined to be appropriate by METRO, provided that METRO shall notify COUNTY prior to any major realignments or reorganizations.

J. Personnel

Effective January 1, 1994, all staff presently budgeted in the County Recreation Fund shall be transferred to METRO. METRO agrees that all COUNTY employees transferred to METRO by this Agreement shall be held harmless from any layoffs or reductions in force directly related to the City of Portland/METRO/Oregon Arena Corporation agreement. All COUNTY employees transferred to METRO by this Intergovernmental Agreement shall be

permitted to transfer any accrued vacation time and any accrued sick time with them to METRO, to the extent and in the manner permitted by ORS 236.610(2). COUNTY shall be responsible for any obligations which might exist with respect to accrued compensation time or personal leave, as well as with respect to accrued vacation time in the event that any employee elects not to transfer over 80 hours of vacation time pursuant to ORS 236.610(2). COUNTY shall pay to METRO an amount determined to be the cash equivalent of the amount of vacation time transferred by each employee, in addition to any other funds to be transferred by COUNTY to METRO pursuant to this Agreement. METRO shall provide space in its new Metro Regional Center for the Parks administrative staff transferred as part of this Intergovernmental Agreement. This Intergovernmental Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and the COUNTY. This Intergovernmental Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever. It is the specific intention of the COUNTY and METRO that the rights, if any, of any employees transferred under this Intergovernmental Agreement shall be governed exclusively by ORS 236.610 to 236.650 and adjudicated via the procedures provided by those statutes and no other.

K. User Fees

METRO shall have the sole responsibility and authority to set user fees for any or all of the County Facilities except that METRO shall not increase user fees for County Facilities prior to July 1, 1994, without the joint agreement of the COUNTY and METRO.

L. Excise Tax

METRO shall have the sole responsibility and authority to exact an excise tax on all programs and activities comprising, or taking place at, the County Facilities, except that METRO shall not increase or impose such an excise tax prior to July 1, 1994, without the joint agreement of the COUNTY and METRO. Any excise tax receipts shall not be restricted to the benefit of the County Facilities, but shall be used for any public purpose deemed appropriate by METRO.

M. Indemnification

1. COUNTY, to the maximum extent permitted by law and subject to and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and save harmless METRO, Metro ERC, and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, remedial actions, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place prior to January 1, 1994, arising from the operations of the County Facilities. COUNTY's duty of indemnification shall extend to any

pollution condition, contamination, fuel leak, discharge, release or hazard which occurred or originated prior to January 1, 1994, or is the result of conditions which were created prior to January 1, 1994.

2. METRO, to the maximum extent permitted by law, subject to and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and save harmless COUNTY, and its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, remedial actions, fines, suits and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place on or after January 1, 1994, arising from the operations of the County Facilities by METRO or Metro ERC. METRO's duty of indemnification shall extend to any pollution condition, contamination, fuel leak, discharge, release or hazard which occurred or originated on or after January 1, 1994, or is the result of conditions which were created on or after January 1, 1994. Provided, however, that during PHASE I of this Agreement, METRO's duties of indemnification and defense shall be limited to the amount transferred by COUNTY to METRO as provided in Section 3(F)(1).

3. The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit and protection of METRO, Metro ERC, and COUNTY, and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or person other than METRO, COUNTY, and their respective officers, employees, and agents.

N. County Ordinances/Services

1. All COUNTY resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the County Facilities in force and effect on January 1, 1994, shall remain in force and effect with regard to the County Facilities until superseded or repealed by any ordinance, resolution, executive order, procedure or rule duly adopted or promulgated by METRO, subject, however, to any restrictions contained in paragraphs K and L. In the case of EXPO, METRO may delegate its authority to supersede or repeal previous COUNTY directives to Metro ERC. COUNTY shall cooperate and assist METRO in the implementation of any METRO action to supersede or repeal previous COUNTY directives that may require COUNTY action to amend COUNTY ordinances.

2. METRO shall have full power and authority to enforce any COUNTY ordinances, resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the County Facilities, to the full extent that COUNTY possesses such authority. In the case of EXPO, METRO may delegate its enforcement authority to Metro ERC.

3. Notwithstanding any other provisions herein, COUNTY shall continue to provide any services, including but not limited to, health-related or law enforcement services, that it has previously provided to the County Facilities, including but not limited to the provision of inmate labor services, in at least the same manner and to the same extent that such services were provided prior to transfer. COUNTY may bill METRO for the cost of such services only to the extent that COUNTY bills other COUNTY programs for the cost of such services. In addition, the COUNTY shall continue to pay property assessments on County Facilities and shall continue its annual contribution to the Oregon Historical Society, for the operation of the Bybee-Howell House, until implementation of PHASE II (Transfer of Ownership). Provided, however, that METRO shall pay the impending sewer assessment and property taxes for Glendoveer Golf Course out of the County Recreation Fund transferred to METRO. During PHASE I of this Agreement, COUNTY shall provide space for cemetery personnel, including garage and storage space, at no charge.

4. The Multnomah County Parks Advisory Committee shall continue in its present capacity until such time as METRO creates a Regional Parks Advisory Committee. It is anticipated by the parties that the current Multnomah County Parks Advisory Committee shall become an important part of any future Regional Parks Advisory Committee.

O. Transition Team

To ensure a smooth transition of services, a Transition Team will be established consisting of the Director of Environmental Services from Multnomah County, a representative of the County Chair, the Deputy Executive Officer of METRO, the Metro Council Administrator, and the General Manager of the Metro ERC facilities. This team will be responsible for information sharing among the agencies, resolution of minor contract disputes, and coordination of services. This Transition Team will meet as needed until PHASE II of this Agreement.

P. Reporting Requirements

METRO shall provide the Director of Environmental Services with a written report on activities within the County Facilities on a quarterly basis. This report shall include a financial status on the COUNTY programs, a summary of activity level at each facility, and a brief narrative of unusual or important issues or situations that have occurred during the reporting period. This report is due to the COUNTY no later than October 25, January 25, April 25, and July 25.

In addition, METRO shall advise the Director of Environmental Services in writing immediately in the event of fee changes, ordinance revisions, significant organizational changes within COUNTY programs, and/or major changes in policy which affect County Facilities or programs.

**Q. Neighborhood Parks**

The Neighborhood Parks shall be transferred to Metro in accordance with this Agreement for operational and management purposes only. It is understood that the level of maintenance for Neighborhood Parks shall not exceed that provided by the COUNTY at the time of transfer, except as may be required by law. The provisions of Section 8, PHASE II Transfer of Ownership, shall not be construed so as to apply to any Neighborhood Parks. It is anticipated by the parties that operation, management, and possibly, ownership of the Neighborhood Parks shall be transferred by COUNTY to the City of Portland, or some other entity. METRO shall cooperate with any COUNTY directives regarding appropriate transfer of Neighborhood Parks' operation, management, and/or ownership. At all times, METRO's operation and management of any Neighborhood Parks shall be pursuant to this Intergovernmental Agreement, and shall be fully compensated. METRO may direct any surplus resulting from the operation and management of the other County Facilities towards the cost of operating, managing, and otherwise maintaining the Neighborhood Parks. In the event that any surplus resulting from the operation and management of the other County Facilities is insufficient to cover the cost of operating, managing, and otherwise maintaining the Neighborhood Parks, METRO shall be fully reimbursed for said costs by COUNTY. METRO may, in its discretion, establish a separate Neighborhood Parks Account within the Metro Regional Parks/Expo Fund referred to in Section 3(E), in order to assure proper segregation of Neighborhood Parks costs.

**SECTION 4**

**RECORDS AND INFORMATION**

**A. County Records Requested by Metro/Metro ERC**

If requested by METRO or Metro ERC, and to the extent permitted by law, COUNTY shall provide to METRO or Metro ERC either the originals or copies of any records in its possession regarding the County Facilities, including any records in any electronic format. The requesting party shall reimburse the provider for the reasonable costs of providing the records or copies thereof, if billed by the provider. All original records provided under this subsection shall remain the property of the provider, even though in the possession of Metro ERC or METRO. Metro ERC and METRO shall not destroy or otherwise dispose of the original records without the prior written consent of the provider.

**B. Records and Information to be Provided in Advance of Effective Date**

In addition to any records requested by METRO or Metro ERC, COUNTY shall provide the following records and information as soon as possible, and in no event later than December 31, 1993:

1. A specific list of all funds to be transferred, their financial history, current fund balance, and restrictions on usage and collection, if any.
2. An inventory of all fixed assets, including depreciation schedule and book value.
3. An inventory of all personal property to be transferred, including any maintenance agreements.
4. A list of all current contracts applicable to the County Facilities, including but not limited to service, vendor, and exhibitor contracts, with copies attached.
5. A compilation of all policies, ordinances and regulations which govern the operations of the County Facilities.
6. A list of any unwritten agreements, practices, or understandings which customers of the County Facilities may expect to be continued.
7. A list of all staff to be transferred, including payroll records, general ledger account balances, current COUNTY classifications, job descriptions, and any current assignments.
8. A list of current or foreseen assessments against property.
9. Any estimates or studies, complete or incomplete, of any structural improvements needed or recommended for the County Facilities, including any safety recommendations.
10. A list of all services provided by the COUNTY to the County Facilities by other COUNTY departments or divisions, and any internal COUNTY charges imposed for such services.
11. A description of any known environmental hazards or exposures, including but not limited to underground fuel tanks, PCBs, and asbestos.

## **SECTION 5**

### **DISPUTE RESOLUTION**

#### **A. Exhaustion of Dispute Resolution Process Required**

Neither party shall resort to litigation to enforce any of the terms of this Agreement unless and until the dispute resolution process established in this section has been completed,



provided, however, that a party may institute litigation in a court of competent jurisdiction to require a party to participate as provided herein.

**B. Procedure**

In the event of a dispute arising under this Agreement between the parties, the parties shall first attempt to resolve the dispute by negotiations with each other in good faith. In the event that such negotiations do not provide a mutually-agreeable settlement, either party may initiate the following dispute resolution process:

1. The initiating party shall give written notice of initiation of dispute resolution proceedings to the Metro Executive Officer, to the County Chair, and to a person mutually agreed to by the Metro Executive Officer and the County Chair. The three together shall constitute the Dispute Resolution Committee. The notice shall identify the dispute as to which the dispute resolution process is being initiated.

2. Not later than fifteen (15) days after receipt of the notice of initiation, each party to this Agreement may submit a written statement to the Dispute Resolution Committee stating the party's position on the dispute.

3. Not later than thirty (30) days after notice of initiation, the Dispute Resolution Committee shall decide on a resolution of the dispute and shall notify the parties to this Agreement of the resolution. Decisions of the Dispute Resolution Committee shall be by majority vote.

4. Decisions of the Dispute Resolution Committee shall be final and binding on the parties unless, within 60 days of receipt of the decision of the Committee, the governing board of either party by duly adopted resolution gives written notice of its rejection of the decision.

**SECTION 6**

**REMEDIES**

In the event a party fails to comply with any provision of this Agreement, then any other party shall be entitled to any remedy available at law or in equity, provided that the party has first exhausted its remedies under Section 5 of this Agreement. The termination of this Agreement shall not prevent a party from receiving any additional remedy not inconsistent with the events specified to occur on termination.

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## SECTION 7

### TERMINATION

#### A. Termination by Mutual Agreement

The parties may terminate this Agreement at any time prior to PHASE II, Transfer of Ownership, by mutual written agreement. The procedure on termination by mutual agreement shall be determined by the termination agreement.

#### B. Automatic Termination

In the event that the parties do not reach a mutual written agreement for PHASE II, Transfer of Ownership, by January 1, 1996, this Agreement shall terminate effective June 30, 1996. On the effective date of the termination, the events described in subsection (D)(1-9) of this Section shall occur.

#### C. Unilateral Termination

In the absence of a signed written agreement among the parties hereto then in existence for PHASE II, Transfer of Ownership, or a signed written termination agreement pursuant to paragraph A of this section, then COUNTY or METRO may, by duly adopted resolution of its governing body, initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective six (6) months after the date of the notice. On the effective date of the termination, the events described in subsection (D)(1-9) of this Section shall occur.

#### D. Termination Procedure

In the event of termination, subject to compliance with any statutory requirements, the following shall occur:

1. After the date of termination, all revenues from and expenditures for the County Facilities shall be treated as COUNTY revenues and expenditures, except to the extent that METRO has transferred METRO or Metro ERC funds to the County Facilities;
2. All METRO and Metro ERC accounts receivable and other receivables related to County Facilities existing on the termination or thereafter accruing shall be assigned to COUNTY, and COUNTY shall be responsible for payment of all METRO and Metro ERC accounts payable and other obligations existing as of that date or thereafter related to the County Facilities;

of any METRO or Metro ERC funds which have been transferred to the County Facilities, said transfer shall be accomplished in substantially the same manner in which funds were transferred to METRO originally;

4. All event and concession bank accounts related to the County Facilities shall be transferred to COUNTY subject to all outstanding checks or authorized demands for payment issued by METRO prior to the termination date;

5. All records related to County Facilities shall become the property of COUNTY and shall be transferred to COUNTY;

6. COUNTY shall comply with ORS 236.610 et. seq., to the extent applicable, with respect to all personnel whose positions are included in the budgets for County Facilities;

7. All contracts, permits, rental agreements, and licenses or portions thereof related to the County Facilities, or fixed assets or personal property funded by the County Recreation Fund shall be assigned to COUNTY;

8. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of County Facilities and Other Facilities operated by METRO or Metro ERC shall be carried out in good faith by the parties hereto; and

9. Any dispute between the parties regarding carrying out the requirements of subsection (D)(1-9) of this Section shall be resolved pursuant to Section 5 of this Agreement.

## SECTION 8

### PHASE II TRANSFER OF OWNERSHIP

#### A. General

This Agreement contemplates that, effective no later than July 1, 1996, COUNTY shall transfer to METRO full ownership of those of the County Facilities which METRO has determined are public cultural, trade, convention, exhibition, sports, entertainment, or spectator facilities, or parks, open spaces, or recreational facilities of "metropolitan concern." Neighborhood Parks identified in Exhibit 1 are intended to be transferred to the City of Portland during PHASE I, and in no event shall they become the property of METRO. Upon the effective date of a signed written agreement for PHASE II TRANSFER OF OWNERSHIP, the provisions of PHASE I consolidation shall no longer apply, except those of which may be specifically incorporated or referenced in any PHASE II agreement, or those provisions which by their specific terms go beyond PHASE I.

those of which may be specifically incorporated or referenced in any PHASE II agreement, or those provisions which by their specific terms go beyond PHASE I.

**B. PHASE II Procedure**

1. No later than July 1, 1995, METRO shall determine, by whatever procedures are required by the 1992 Metro Charter, if any, which of the County Facilities are public cultural, trade, convention, exhibition, sports, entertainment, or spectator facilities, or parks, open spaces, or recreational facilities of "metropolitan concern," such that full METRO-ownership of such facilities would be appropriate under the 1992 Metro Charter.

2. No later than July 1, 1995, METRO and COUNTY shall initiate negotiations for full transfer of ownership of those facilities identified as appropriate for METRO ownership and control. METRO and COUNTY shall bargain in good faith over the transfer of ownership of such facilities.

3. In the event that a signed mutual written agreement for PHASE II, Transfer of Ownership, has not been entered into by January 1, 1996, this Agreement shall terminate as provided in Section 7(B).

**SECTION 9**

**AUTHORITY TO MAKE DECISIONS**

This Agreement provides for various approvals, waivers, executions of further documents implementing this Agreement, or other decisions or actions to be made or taken on behalf of COUNTY and METRO hereunder. Except as otherwise specifically provided in this Agreement, such approvals, waivers, executions, or other decisions or actions shall be deemed made or taken if in writing and executed by the County Chair, if on behalf of COUNTY, and by the Metro Executive Officer, if on behalf of METRO. Any amendments to this Agreement and any PHASE II, Transfer of Ownership, agreement must be approved by the County Commission and the Metro Council.

**SECTION 10**

**ASSIGNMENT AND TRANSFER**

Except as provided herein, this Agreement and any property to be transferred by its terms, shall not be assignable or transferable by either party or by operation of law except with the written consent of the other party. A consenting party may impose any conditions on the consent that are reasonable under the circumstances. The assignee or transferee shall be bound by all the provisions of this Agreement. The assignor or transferor shall not be

identified as Neighborhood Parks to the City of Portland is contemplated by this Agreement, and the parties shall cooperate to accomplish such assignment and transfer.

## **SECTION 11**

### **ATTORNEYS' FEES**

In the event of a suit or action to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees and expenses, including the cost of depositions and expert witnesses, at trial and on appeal of the suit or action, in addition to all others sums provided by law.

## **SECTION 12**

### **NOTICE**

Any notice provided for hereunder shall be deemed sufficient if deposited in the United States mail, certified mail, return receipt requested, postage prepaid, addressed either to the following address or to such other address or addresses as the recipient shall have notified the sender of by notice as provided herein:

**METRO:** Executive Officer  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

With a copy to:

Clerk of the Council  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Office of General Counsel  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

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**COUNTY:** County Chair  
Multnomah County  
1120 S.W. Fifth Avenue, Rm. 1410  
Portland, OR 97204

With a copy to:

County Counsel  
Multnomah County  
1120 S.W. Fifth Avenue, Rm. 1530  
Portland, OR 97204

Notice hereunder shall be deemed received three (3) days after mailing as provided in this Section or on actual delivery to the addressee, whichever occurs first.

### **SECTION 13**

#### **EXECUTION OF FURTHER DOCUMENTS**

In order to complete implementation of the provisions of this Agreement, it may be necessary for METRO, Metro ERC, and COUNTY to execute further documents enabling implementation. Each of them shall execute such further documents and take such other steps as are reasonably necessary or appropriate to implementing the provisions hereof.

### **SECTION 14**

#### **WAIVERS**

The waiver of any provision of this Agreement, whether a waiver as to a particular application of the provision, or as to all applications of the provision, shall be binding on the party making the waiver only if in writing and executed by the party. Unless otherwise expressly provided in the written waiver, the waiver by a party of performance of a provision as to a particular application shall not be a waiver of nor prejudice the party's right to require performance of the provision as to other applications or of any other provision.

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SECTION 15

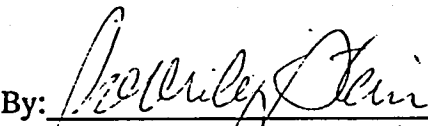
ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties. This Agreement may not be modified except by a written amendment dated and approved and signed by all the parties hereto then in existence. No party shall be bound by any oral or written statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM

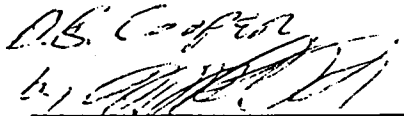
MULTNOMAH COUNTY

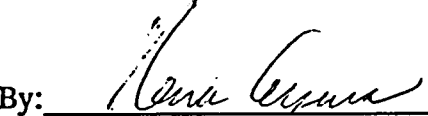
  
\_\_\_\_\_  
Multnomah County Counsel

By:   
\_\_\_\_\_  
Beverly Stein, County Chair  
Date: December 16, 1993

APPROVED AS TO FORM

METRO

  
\_\_\_\_\_  
Metro General Counsel

By:   
\_\_\_\_\_  
Rena Cusma,  
Executive Officer  
Date: 12/28/93

gl  
1178F

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-16 DATE 12/16/93  
DEB BOGSTAD  
BOARD CLERK

## **EXHIBIT 1**

### **NATURAL AREAS AND REGIONAL FACILITIES**

1. Mason Hill
2. Sauvie Island Boat Ramp
3. Multnomah Channel
4. Bybee-House & Howell Park
5. Bell View Point
6. M. James Gleason Memorial Boat Ramp
7. Broughton Beach
8. Beggars Tick Marsh
9. Glendoveer Golf Course & Fitness Trail
10. Blue Lake Park
11. Gary and Flagg Islands
12. Oxbow Park
13. Indian John Island
14. Larch Mountain Corridor
15. Chinook Landing marine Park
16. Sandy River Access Points
17. Smith & Bybee Lakes Addition
18. Phillipl Property

### **NEIGHBORHOOD PARKS**

1. Dickenson
2. North Powelhurst
3. Lynchview
4. Gilbert Heights
5. Parklane
6. Lincoln
7. Gilbert Primary
8. East Lynchwood

### **PIONEER CEMETERIES**

1. L. Jones
2. Grand Army of the Republic
3. Lone Fir
4. Multnomah Park
5. Brainard
6. Columbia Pioneer
7. White Birch
8. Escobar
9. Gresham Pioneer
10. Mt. View Stark
11. Douglass
12. Pleasant Home
13. Powell Grove
14. Mt. View Corbett

### **PUBLIC TRADE & EXHIBITION FACILITY**

1. Portland Exposition Center



## STAFF REPORT

For the purpose of approving an Intergovernmental Agreement between Multnomah County and Metro regarding transfer of regional parks, natural areas, golf courses, cemeteries, and trade/spectator facilities presently owned and operated by Multnomah County to Metro.

December 2, 1993

Presented by: Richard Engstrom  
Mark Williams

## PROPOSED ACTION

The Intergovernmental Agreement sets forth the details providing for a two-phase consolidation of operation, management, and ownership of all regional park facilities, regional natural areas, and trade/spectator facilities presently owned and operated by Multnomah County.

The first phase of consolidation is a management and operation agreement for all County Facilities managed and operated within the current Multnomah County Recreation Fund. The first phase of consolidation shall be of limited duration pending full consolidation, including transfer of ownership of the County Facilities to Metro, with the exception of any Neighborhood Parks.

It is understood between the County and Metro that a second phase of consolidation, including transfer of ownership, is of critical importance, and that Phase I consolidation of operation and management is merely intended to promote a smooth and harmonious transfer of those County Facilities to Metro that are of "metropolitan concern" or otherwise within Metro's authority.

This agreement, if approved by the Metro Council, would make effective January 1, 1994, the transfer of all operational rights and responsibilities for the programs, activities, properties and/or facilities currently budgeted in the Multnomah County Recreation Fund, along with all funds and revenues related to these programs to Metro.

## FACTUAL BACKGROUND AND ANALYSIS

The Multnomah County Board of Commissioners adopted a resolution in October of 1991 supporting the regionalization of certain county services and requested that Metro enter into discussions regarding the feasibility of such an action.

The Metro Council through action by the Governmental Affairs Committee authorized the creation of five task forces to consider the areas of potential regionalization. After numerous meetings of the task forces, it was determined that the most appropriate areas for regionalization of services was in natural areas, regional parks and the Expo Center.

Numerous discussions were held by representatives of the two jurisdictions developing a set of assumptions which would guide the development of a Memorandum of Understanding.

On June 10, 1993, the Metro Council authorized the creation of a task force to negotiate a Memorandum of Understanding with Multnomah County. The task force consisted of Councilors Richard Devlin, Ed Washington, Executive Officer, Rena Cusma and Multnomah County Commissioners Gary Hansen and Sharron Kelley.

On October 14, 1993, both the Multnomah County Board of Commissioners and the Metro Council approved a Memorandum of Understanding which set forth the principles upon which a two phase agreement would be developed and submitted to the governing bodies of Multnomah County and Metro.

This Intergovernmental Agreement is the result of negotiations conducted by representatives of the governing bodies of Multnomah County and Metro. The Metro representatives were Councilors Richard Devlin, Ruth McFarland, Ed Washington and Executive Officer Rena Cusma. The Multnomah County representatives were Commissioners Sharron Kelley and Gary Hansen.

The Metropolitan Policy Advisory Committee (MPAC) was provided the Memorandum of Understanding for its review and comment. MPAC reviewed this item on August 11, 1993 and August 25, 1993. MPAC submitted a memorandum to Presiding Officer Judy Wyers dated October 14, 1993, which contained recommendations for amendments to the MOU. The Metro Council, in approving the MOU on October 14, 1993, directed the Metro representatives in negotiations on the intergovernmental agreement to consider these recommendations as part of their deliberations. You will find included in your packet a memorandum to MPAC dated November 23, 1993 which responds to their recommendations.

#### SUMMARY OF INTERGOVERNMENTAL AGREEMENT

##### Terms of Transfer

Effective January 1, 1994, Multnomah County would transfer all operational and management rights and responsibilities for the following programs, activities, properties and/or facilities currently budgeted in the Multnomah County Recreation Fund, along with all funds and revenues related to these programs to Metro:

1. All park facilities (except Vance Park) and natural areas currently owned or operated by Multnomah County;
2. Glendoveer Golf Course;
3. Pioneer Cemeteries;
4. Expo;

5. Any new acquisitions of regional natural areas by Multnomah County subsequent to the date of this agreement shall be transferred to Metro under the same terms and conditions set out in this agreement for the other County facilities.

A complete list of all properties affected by this agreement are delineated in Exhibit 1 of the IGA.

It is intended that the Expo Center will be operated by the Metropolitan Exposition Recreation Commission (MERC).

The remainder of the programs being transferred will be incorporated into a new department merging Metro's greenspaces activities with those of the transferred County programs.

#### NATURAL AREAS ACQUISITION AND PROTECTION FUND

Both parties agreed that maintaining the purpose and integrity of the County's Natural Areas Acquisition and Protection Fund was of the highest importance. Multnomah County passed Resolution No. 93-338 (attached as Exhibit 2 to the IGA) which set forth guidelines for the operation of the fund. Further it was agreed that the County and Metro will cooperate to develop an annual budget proposal for the Natural Areas Fund, to be presented to the Board of County Commissioners for their adoption. The County shall fully reimburse Metro for expenses incurred by Metro for those portions of the natural areas fund budget to be implemented by Metro, including compensation and benefits for County personnel transferred to Metro whose compensation is currently budgeted out of the fund.

#### EXPO/MULTNOMAH COUNTY FAIR

Expo is to be managed and operated by Metro through the Metropolitan Exposition Recreation Commission. Metro will assume responsibility for the Expo master plan process begun by Multnomah County. This would include implementation of the "Portland Exposition Center Facilities Plan," prepared by the County, to the extent feasible as determined by further studies, further Metro/MERC planning efforts, and by the availability of resources for implementation.

It is understood that the Multnomah County Fair shall continue to be the sole and exclusive responsibility of Multnomah County. Metro shall continue to make Expo space and expertise available for the Multnomah County Fair, through a contract with the Multnomah County Fair Board. Both the County and Metro recognize the value of the County Fair to the community and are committed to the future success of this activity. The IGA on pages 15-16 defines the special considerations provided to the Multnomah County Fair during Phase I of this agreement.

#### PERSONNEL

Effective January 1, 1994, all staff presently budgeted in the County Recreation Fund shall be transferred to Metro.

#### USER FEES

Metro shall have the sole responsibility and authority to set user fees for any or all of the County Facilities except that Metro shall not increase user fees for County Facilities prior to July 1, 1994 without the joint agreement of the County and Metro.

#### EXCISE TAX

Metro shall have the sole responsibility and authority to enact an excise tax on all programs and activities comprising, or taking place at, the County Facilities, except that Metro shall not increase or impose such an excise tax prior to July 1, 1994. Any excise tax receipts shall not be restricted to the benefit of the County Facilities, but shall be used for any public purpose deemed appropriate by Metro.

#### TRANSITION TEAM

A transition team shall be established consisting of the Director of Environmental Services from Multnomah County, a representative of the County Chair, the Deputy Executive Officer of Metro, the Metro Council Administrator, and the General Manager of MERC. This transition team will be responsible for dealing with administrative issues, conflicts, etc... that might arise during Phase I of this agreement.

#### REPORTING REQUIREMENTS

Metro shall provide the County with a written report on activities within the County facilities on a quarterly basis.

#### NEIGHBORHOOD PARKS

The neighborhood parks shall be transferred to Metro in accordance with this agreement for operational and management purposes only. The level of maintenance for neighborhood Parks shall not exceed that provided by the county at the time of transfer, except as required by law. It is anticipated that both the operation and ownership of these neighborhood parks will be transferred to the City of Portland in the very near future. At all times, Metro's operation and management of any neighborhood parks shall be pursuant to this agreement, and shall be fully compensated. The provisions of Section 7, Phase II, Transfer of Ownership, shall not apply to any neighborhood parks.

#### TRANSFER OF OWNERSHIP

This agreement contemplates that, effective not later than July 1, 1996, Multnomah County shall transfer to Metro full ownership of all County facilities identified in this agreement with the exception of neighborhood parks.

#### SUMMARY

The Metro Council was provided with a variety of back ground materials related to this agreement particularly as it relates to the financial projections and assumptions. They were included as part of your notebook materials.

#### RECOMMENDATION

The Executive Officer recommends adoption of Resolution of 93-1877.



METRO

ATTACHMENT

DATE: November 22, 1993

TO: Metropolitan Policy Advisory Committee

FROM: *JW* Judy Wyers, Presiding Officer  
*RC* Rena Cusma, Executive Officer

RE: Transfer of Multnomah County Regional Parks and Other Facilities

This is to advise you of the status of the Intergovernmental Agreement (IGA) between Metro and Multnomah County regarding the transfer of certain County facilities to Metro. This memorandum will also advise you of the status of those points MPAC recommended be included in the Memorandum of Understanding (MOU), and presumably in the IGA as well.

The IGA has been agreed to by negotiating teams representing the Multnomah County Board of Commissioners and the Metro Council and Executive Officer. It will be forwarded to each agency's governing body, with consideration by the Metro Council's Governmental Affairs Committee scheduled for December 2; if it passes out of committee at that time, it will be before the Metro Council on December 9.

MPAC submitted a memorandum from Commissioner Judie Hammerstad to Presiding Officer Judy Wyers dated October 14, which contained recommendations for amendments to the MOU. There were four substantive items in that memorandum, which shall be addressed individually. The Metro Council, in approving the MOU on October 14, added a provision to its resolution which called for the Council to "direct Metro's representatives in negotiations on the intergovernmental agreement to consider in the negotiations with Multnomah County, the recommendations regarding the regional parks and Expo transfer which the Metropolitan Policy Advisory Committee has forwarded to the Council."

The items recommended by MPAC, and their status in the IGA, are as follows:

1. Exclude the "neighborhood parks" from the transfer.

The IGA deals with the issue of the neighborhood parks in Section 3(Q) on page 22. That section stipulates that the neighborhood parks are to be transferred to Metro for operational and management purposes only, and that transfer of these parks to the City of Portland is anticipated. Costs for "operating,

managing, and otherwise maintaining the Neighborhood Parks" are to be paid by surplus revenues from the other County facilities, or reimbursed by the County. The IGA further prohibits Metro from expending funds on the neighborhood parks from any other Metro program. (Section 3(F)(2), pages 11-12.)

Both Metro and Multnomah County continue to expect a transfer of these neighborhood parks to the City of Portland to be completed prior to January 1, 1994, the effective date of the IGA. They are included in the IGA, however, in case that transfer is not completed prior to January 1 because there would otherwise be no staff or resources left at Multnomah County to manage and maintain them. In the unlikely event that Metro assumes maintenance responsibility for these facilities, the small annual cost of some \$3,000 for that maintenance will be a compensated service, as stipulated in the Metro Charter.

2. Perform financial analyses as stipulated.

"A. Agreement between Multnomah County and Metro on projected (for the next two years) financial performance of all properties and programs to be merged with Metro prior to the signing of the intergovernmental agreement. The levels of measurement will be part of the mutual agreement."

In cooperation with Multnomah County, Metro's finance staff performed several analyses of projected financial performance of the facilities and programs to be transferred. Based on the most recent of these, the Recreation Fund programs are projected to be self-supporting through FY 1995-96. This projection assumes a fund balance transfer of \$450,000, which will be necessary to help sustain the programs. (See August 11 Financial Projections sheet, attached.) The IGA further contains a stipulation that Metro shall not be required to subsidize the County facilities during the term of Phase I of the agreement, through June 30, 1996; if any such subsidy is made, the source of the subsidy may be repaid, with interest.

The levels of measurement requested in Commissioner Hammerstad's memo have not been included in the IGA because it was deemed by both governments that the financial projections performed by Metro were adequate to guide Metro's oversight of the transferred programs. It may not be in Metro's interests to assume responsibility for these operations if they require subsidy from other Metro funds and programs. Accordingly, the performance of the Regional Parks/Expo Fund will be closely monitored through the term of the agreement.

"B. That any financial shortfall or discrepancies which occur in operation/use of transferred facilities be borne by both Metro and Multnomah County, with Multnomah County's responsibility decreasing during the time of transition."

This recommendation has not been included in the IGA in the

form submitted by MPAC. The intent of the recommendation, to reduce the regional liability for the transferred programs, is addressed by other means. Those include the restriction on use of Metro funds to subsidize the operations of the Regional Parks/Expo Fund (cited above), and the Metro Council's authority to budget expenditures consistent with resources. Should a shortfall be projected, the Council may choose to reduce expenditures or raise fees to meet the shortfall. If a shortfall exists, Section 3(B) on page 6 requires Metro and the County to meet "to discuss available options." The terms of Phase I of the agreement also provide that the facilities may be returned to the County prior to the ownership transfer anticipated for Phase II in 1996.

"C. After the intergovernmental agreement becomes effective, Metro is to perform an operations audit on the combined operations as part of the regional government assuming management of programs and facilities."

The operations of the transferred facilities and programs will be subject to management by the elected Executive, oversight by the Council through a standing committee which will be assigned this oversight responsibility, and the performance audit process by the elected Auditor, effective January, 1995. If the term "operations audit" is consistent with our understanding of a "performance audit," the Metro Council could direct its contract performance auditor to perform such an audit in 1994.

"D. An oversight committee comprised of representatives from Multnomah County, Metro and Washington County or Clackamas County will review actual performance, versus projected (including method of allocation of costs), on a quarterly basis and report to both Metro and Multnomah County."

The IGA includes a provision for a transition team to be established, to be responsible for "information sharing among the agencies, resolution of minor contract disputes, and coordination of services." (Section 3(O), page 21.) The members will include Multnomah County's Director of Environmental Services, a representative of the County Chair, Metro's Deputy Executive Officer, Council Administrator, and MERC General Manager. This group will report to the two agencies' governing bodies, which include (at Metro) elected representatives from all three counties in the Metro area.

In addition, section 3(P), on page 21, requires Metro to provide to the County "a written report on activities within the County Facilities on a quarterly basis. This report shall include a financial status on the County programs, a summary of activity level at each facility, and a brief narrative of unusual or important issues or situations that have occurred during the reporting period." These reports will be matters of public



record, and will therefore be available to any interested parties.

**3. Metro to define criteria for declaration of "metropolitan concern."**

The Metro Council has an ordinance before it (#93-520, attached) which declares all the transferred facilities (except the neighborhood parks) to be of metropolitan concern, or otherwise meet the requirements for operation by Metro as delineated in Section 6 of the Charter. That ordinance has passed out of committee, and will be considered at the same Council meeting as the IGA.

Metro has given serious consideration to the option of establishing criteria for making findings of metropolitan concern (or other Section 6 requirements). Upon review of the Charter, and the minutes of the Charter Committee, however, Metro has determined that it was not the intent of the crafters of the Metro Charter that such criteria be established. Rather, findings of metropolitan concern will be made on a case-by-case basis as potential additional Metro responsibilities arise.

**4. Limit Metro's responsibility to transfer staff currently budgeted in the Multnomah County Recreation Fund.**

The specific language in Commissioner Hammerstad's memo recommended changing MOU language as follows: "~~All s~~Staff presently budgeted in the County Recreation Fund shall may be transferred to Metro . . . ." Our counsel advises that state law governing this action requires that no civil service employees of the transferring government be adversely affected by the transfer. Accordingly, Metro will accept transfer of all employees in the Recreation Fund effective January 1, 1994.

Thank you for your assistance in reviewing and commenting on this intergovernmental agreement. If you have any questions, please feel free to contact either of us.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

RESOLUTION NO. 93-1877, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN MULTNOMAH COUNTY AND METRO REGARDING TRANSFER OF REGIONAL PARKS, NATURAL AREAS, GOLF COURSES, CEMETERIES, AND TRADE/SPECTATOR FACILITIES PRESENTLY OWNED AND OPERATED BY MULTNOMAH COUNTY TO METRO.

Date: December 6, 1993

Presented by: Councilor Devlin

**COMMITTEE RECOMMENDATION:** At its December 2, 1993 meeting the Governmental Affairs Committee voted 4-0 to recommend Council adoption of Resolution No. 93-1877. Voting were Councilors Gates, Gardner, Hansen, and Wyers. Councilor Moore was excused.

**COMMITTEE DISCUSSION/ISSUES:** Deputy Executive Officer Dick Engstrom presented the staff report. He reviewed the background of this issue, and said the last two items considered dealt with the Natural Areas Acquisition and Protection Fund, and provisions concerning the Multnomah County Fair.

Councilor Moore raised concerns in three areas: neighborhood parks; Natural Areas Fund; and the excise tax. Her concern with the neighborhood parks was that the Intergovernmental Agreement (IGA) did not propose maintenance and operation of those parks to be a compensated service; such maintenance would be paid for from the Regional Parks/Expo Fund, unless funds weren't available, in which case the County would reimburse Metro for the expenses.

Senior Assistant Counsel Mark Williams said the proposal to have Metro take over the neighborhood parks was in the IGA at the County's insistence, as a stopgap measure in case the expected agreement to transfer those parks to the City of Portland were delayed. The County is transferring to Metro its staff and resources for neighborhood parks maintenance, and they would not have resources to take care of those parks after January 1, 1994. He added that his office believes the IGA meets requirements that this be a compensated service, because funds to pay for maintenance and operation of the neighborhood parks would be limited to County-originated funds; there would be no other Metro funds used to pay for this service. Councilor Devlin said it was clear that neither Metro nor Multnomah County wants to operate the neighborhood parks, and a transfer to the City of Portland would be in both agencies' interests. They are discussed in the IGA only to ensure that the small level of maintenance required will be done if necessary, and to provide that health and safety issues are addressed in an interim period prior to transfer to the City. He added that the City was concerned that health and safety needs be addressed in the IGA, so they would receive safe facilities at the time of transfer. Councilor Moore suggested the County contract with the City for maintenance.

Charlie Ciecko, Multnomah County Parks Manager, said the documents effecting the transfer would be filed with the County

Board of Commissioners for consideration in December. He said he foresaw no problem with the County Board, but he could not guarantee City acceptance, although he knew of no outstanding concerns at the City.

Councilor Gardner agreed that Metro does not want to be in the business of owning or operating the neighborhood parks. He said it is important for Metro to agree to maintain them for a short time in order to preserve the County's negotiating position with the City: without a provision for maintenance in the IGA, the County's options for dealing with the City would be quite limited. He said he supports the language in the IGA as long as it is clear that the Multnomah County parks system will generate the necessary revenues to provide for neighborhood parks' maintenance, and that Metro's commitment not to take ownership of the neighborhood parks is quite clear.

Councilor Wyers wanted Metro's interests to be covered in case the agreement between the City and County fell through. She said more specificity in the IGA would be preferable.

Councilor Moore said she wanted either a date certain for the end of Metro's responsibility for the neighborhood parks, or a clear provision that the County would provide direct payment for their operations.

Councilor Moore asked for clarification on the excise tax, stating that it was her understanding the excise tax generated at the County facilities was supposed to be dedicated to those facilities. Mr. Williams said that all user fees would remain in the parks system, but the use of the excise tax was at the Metro Council's discretion. He added that this language was consistent with the MOU language. In response to a question from Councilor Wyers, he said that is consistent with Metro policy on the excise tax. Council Analyst Casey Short brought to the Committee's attention a point on the excise tax. He cited a memo from Mr. Williams which said the excise tax was not to go into effect until July 1, 1994, and Ordinance No. 93-520 (declaring the transferred facilities to be of metropolitan concern, and previously approved by the Committee) would need to be amended at Council to reflect the terms of the IGA.

Councilor Moore cited the County's resolution on the Natural Areas Fund, saying that it was to receive some of the proceeds of the sale of undeveloped property only. She was concerned that Metro would have not review over the types of properties sold or the use of the sale proceeds. Councilor Devlin said the terms of the IGA were as proposed because the Fund is a County Fund, and Metro would not have control over it, and a requirement for Metro review would pose a problem similar to those in the Consolidation Agreement with the City of Portland for MERC facilities. He added that the provision dealing with undeveloped properties only was added at the County to resolve a problem they had earlier had with sale of a Sheriff's facility that would have to be replaced;

they wanted to be able to use sale proceeds to help pay for facility replacement in such cases.

Councilor Wyers asked how the Committee wanted to address Councilor Moore's concerns. She acknowledged that the ownership question is adequately addressed, but the issue of operations and maintenance is still open-ended. Councilor Gardner said the phasing of the agreement would ensure the neighborhood parks would not be part of the system beyond June 30, 1996 at the latest. In response to a question from Councilor Wyers, Mr. Williams said alternatives could include removal of the neighborhood parks from the transfer; addition of a more restrictive sunset provision, calling for Metro responsibility to last a shorter period, say three or six months; or require direct compensation from the County for costs of operating and maintaining the neighborhood parks. Councilor Hansen said she was comfortable with existing language because the minimal amount of funding had to come from the other County facilities. Councilor Wyers said she wanted some resolution of this issue by the time the Council considers this item.

Multnomah County Director of Environmental Services Betsy Williams said she did not think the County would be willing to accept direct payment for neighborhood services, even though it would be a small amount. She said the County had concerns about the commitment in the IGA for them to pay for those services if other funds were not available; the County is sending over all the funds available for those facilities, and is probably not willing to come up with more. She said there might be other options available which she would discuss with the County's other negotiators. In response to a question from Councilor Wyers, Ms. Williams said if Metro's responsibility to operate the neighborhood parks were to expire in a short (3 to 6 months) period, provision would have to be made to send money back to the County to pay for the service. Councilor Wyers said she wanted to make clear that her concern stems from comments from other jurisdictions that Metro not use any Metro funds to pay for a local service. She added that an amendment to the agreement could be considered at Council, if a new provision covering the neighborhood parks were agreed to in the interim. The Committee agreed to ask the negotiators to consider alternatives for the neighborhood parks.

Councilor Devlin pointed out for the record that Metro raised all the issues requested by MPAC, and those issues were discussed in negotiations.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Amending        )  
Resolution 90-57 which Creates    )  
a Capital Improvement Fund and    )  
Natural Areas Protection Fund     )

RESOLUTION

93 - 338

WHEREAS, the BOARD OF COUNTY COMMISSIONERS created a Capital Improvement Fund and Natural Areas Protection Fund upon approval of Resolution 90-57 on April 19, 1990; and

WHEREAS, the BOARD OF COUNTY COMMISSIONERS adopted a "Natural Areas Protection & Management Plan" in June of 1992, as required by Resolution 90-57; and

WHEREAS, the BOARD OF COUNTY COMMISSIONERS has an ongoing commitment to the protection of natural areas as identified in the adopted "Natural Areas Protection and Management plan;" and

WHEREAS, alternative funding sources are not available for the purpose of plan implementation; and,

WHEREAS, certain wording in Resolution 90-57 is vague and does not necessarily reflect current BOARD OF COUNTY COMMISSIONERS' intent regarding disposition of proceeds from the sale of specific properties; and

WHEREAS, it is in the best interest of Multnomah County to clarify BOARD OF COUNTY COMMISSIONERS' intent to avoid delays in sales and disposition of proceeds;

NOW, THEREFORE, BE IT RESOLVED that RESOLUTION 90-57 is amended as follows, with bracketed [ ] words, phrases, or sentences indicating deletion and underlined words, phrases, or sentences indicating additions:

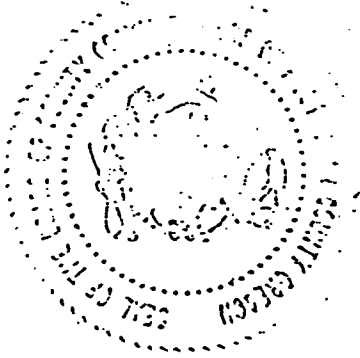
Page 2, Lines 5-9

THEREFORE, BE IT FURTHER RESOLVED, the Board of County Commissioners directs that any proceeds from the sale of undeveloped, unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited equally to the Capital Improvement Fund and the Natural Areas Acquisition and Protection Fund[.]. Proceeds from the sale of developed, unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited to the Capital Improvement Fund.

Page 2, Lines 20-21

THEREFORE, BE IT FURTHER RESOLVED, that the Board will review the use of the funds deposited to the Capital Improvement Fund and the Natural Areas Acquisition and Protection Fund and the division of money between the funds in [five] three years or upon establishment of a regional funding source for natural areas, whichever occurs first.

ADOPTED this 7th day of October, 1993.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

By Beverly Stein  
Beverly Stein, Chair

REVIEWED:

Laurence Kressel  
for Laurence Kressel  
County Counsel  
for Multnomah County, Oregon

EXHIBIT A

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

In the Matter of Creating a                    )  
Capital Improvement Fund and                )  
A Natural Areas Acquisition and            )  
Protection Fund and adopting              )  
guidelines for receipts and                )  
disbursements                                )

RESOLUTION  
90-57

1           WHEREAS, the Board of County Commissioners may authorize the sale of  
2 unrestricted property and/or improvements owned by the County, and;  
3

4           WHEREAS, it is financially prudent to restrict use of any proceeds  
5 received from the sale of unrestricted property for future capital  
6 requirements and the acquisition, protection, and management of natural areas,  
7 and;  
8

9           WHEREAS, the Board has indicated their intent to relocate certain county  
10 functions to a County Government Center, and;  
11

12           WHEREAS, the County's Strategic Plan includes a provision for long-range  
13 improvement capital planning and for the acquisition, protection, and  
14 management of natural areas, and;  
15

16           WHEREAS, given the anticipated growth in the region, the need to acquire  
17 threatened natural areas is critical now,  
18

19           WHEREAS, a need will arise for future capital acquisitions or  
20 improvements and for the acquisition, management, and protection of natural  
21 areas, and;  
22

23           WHEREAS, the Board will authorize the development of a Natural Areas  
24 plan by the Department of Environmental Services. The Board intends to adopt  
25 a Natural Areas plan in 1991.  
26

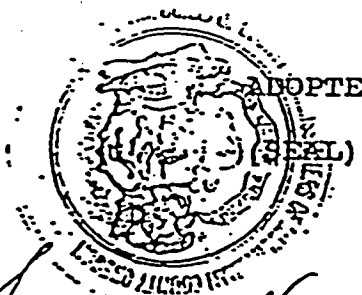
1           THEREFORE, BE IT RESOLVED, that the Board of County Commissioners create  
2 a Capital Improvement Fund and a Natural Areas Acquisition and Protection  
3 Fund, and;  
4

5           THEREFORE, BE IT FURTHER RESOLVED, the Board of County Commissioners  
6 directs that any proceeds from the sale of undeveloped, unrestricted property  
7 (not including land swaps) and interest earnings on the deposited proceeds are  
8 to be credited equally to the Capital Improvement Fund and the Natural Areas  
9 Acquisition and Protection Fund,  
10

11           THEREFORE, BE IT FURTHER RESOLVED, that the only disbursements made from  
12 the Capital Improvement Fund are to be related to the sale or purchase of  
13 property and/or improvement included in the Capital Plan.  
14

15           THEREFORE, BE IT FURTHER RESOLVED, that the only disbursements made from  
16 the Natural Areas Acquisition and Protection Fund are to be related to the  
17 acquisition, protection, and management of natural areas included in the  
18 Natural Areas Plan adopted by the Board of County Commissioners.  
19

20           THEREFORE, BE IT FURTHER RESOLVED, that the Board will review the use of  
21 the funds and the division of money between the funds in [five] three years.



ADOPTED THIS 19th DAY OF APRIL, 1990.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

BY Gladys McCoy  
Gladys McCoy, Chair

REVIEWED

Laurence Kressel  
Laurence Kressel, County Counsel





# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
2115 S.E. MORRISON  
PORTLAND, OREGON 97214  
(503) 248-5000

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: BETSY WILLIAMS, DIRECTOR *B. Williams*  
DEPT. OF ENVIRONMENTAL SERVICES

DATE: SEPTEMBER 25, 1993

RE: RESOLUTION REGARDING NATURAL AREAS  
ACQUISITION AND PROTECTION FUND (OCTOBER 7)

### I. Recommendation/Action Requested:

Recommend approval of following amendments to Resolution 90-57, regarding the creation of the Capital Improvement Fund and the Natural Areas Acquisition and Protection Fund:

- Clarify that proceeds to be allocated to Natural Areas Acquisition and Protection Fund are from the sale of undeveloped, unrestricted property.
- Establish a review date by the Board of County Commissioners on use of the funds in three years.

### II. Background/Analysis:

On April 19, 1990, the Board of County Commissioners unanimously adopted Resolution 90-57, which created a Capital Improvement Fund and Natural Areas Acquisition and Protection Fund (Natural Areas Fund) to receive (in equal shares) the proceeds from the sales of "unrestricted county properties" less closing costs.

The resolution further stipulated that in the case of the Natural Areas Fund, expenditures could not be made until a "Natural Areas Plan" had been adopted by the Board. In June 1992, the "Natural Areas Protection and Management Plan" was adopted by Board Resolution 92-102.

Subsequent to Board approval of Resolution 90-57, it became clear that certain wording within the resolution was vague and that when strictly interpreted would unintentionally limit the County's ability to sell certain properties and reinvest proceeds to replace lost facilities. For example, in the event that the County decided to sell an existing facility to reinvest in another facility, under a strict interpretation of Resolution 90-57, 50% of the proceeds of that sale would be deposited to the Natural Areas Fund.

Clearly, this was not the intent of the Board when Resolution 90-57 was adopted. In fact, the basis for Resolution 90-57 centered on the sale of undeveloped or open-space sites. The rationale was that if Multnomah County were to market open spaces, such as the Edgefield Farm (one of the largest pieces of open space within the UGB in Multnomah County), a portion of those proceeds should be reinvested in the acquisition and protection of other sensitive natural areas.

In order to clarify Resolution 90-57 and accurately reflect the Board of County Commissioner's intent, it is recommended that the resolution be amended to specify that 50% of the proceeds only from undeveloped property sales be deposited to the Natural Areas Fund. Further, this resolution recommends a review of the fund by the Board in three years, consistent with the intended transfer of deed of these properties to Metro under the pending transfer intergovernmental agreement.

### III. Financial Impact:

The proposed amendment to Resolution 90-57 effectively limits property sale proceeds going into the Natural Areas Fund to those realized from the sale of Edgefield, as Edgefield is the primary undeveloped, unrestricted surplus property in the County's current inventory. The entire 284 acres at Edgefield were appraised in March, 1990 at \$6,618,700. The longterm potential, therefore, for funds to be deposited into the Natural Areas Fund is somewhat in excess of \$3 million. The 1993/94 adopted budget for the Natural Area Fund is \$621,678.

### IV. Legal Issues:

Not applicable.

### V. Controversial Issues:

The commitment of unrestricted revenues for the acquisition, protection, and management of natural areas is potentially contentious in an era of scarce resources for a variety of public needs. However, the Board of County Commissioners has consistently over time recognized that the preservation of our environment is integral to the health, vitality and quality of life in our community; and this proposed resolution is consistent with that commitment.

VI. Link to Current County Policies:

As referenced above, the Natural Areas Fund provides the mechanism for funding the "Natural Areas Protection and Management Plan," adopted by the Board in 1992. In addition, this item supports County objectives included in the 1993/94 Adopted Budget regarding the protection of the County's natural areas (See budget pages DES-3 and DES-30).

VII. Citizen Participation:

The environmental community has been instrumental in the development and promotion of the County's Natural Areas Fund and Plan. They were actively involved in the adoption of Resolution 90-57; and they have been consulted in the development of the recommended amendment. It is highly probable that they will be present to testify on this item.

In addition, the Central Citizen Budget Advisory Committee reviewed the Natural Areas Fund as part of their 1990 Dedicated Fund Review Report. Their findings were as follows:

This fund was established to receive half of the revenues from sale of County owned property.....the CCBAC finds the fund to be totally insufficient for the need...

VIII. Other Government Participation:

Although the Natural Areas Plan has been excluded for transfer to Metro under the proposed Parks/Expo transfer agreement, Metro is extremely concerned that the County maintain an ongoing role as an advocate and supporter of greenspaces and natural areas in the region. It is anticipated that Metro and the County will work closely and cooperatively in this area.

*1980  
before amendment  
see signed res.*

**INTERGOVERNMENTAL AGREEMENT**

Intergovernmental Agreement Regarding Transfer of Regional Parks,  
Natural Areas, Golf Courses, Cemeteries, and Trade/Spectator Facilities  
Presently Owned and Operated by Multnomah County to Metro.

This Agreement dated as of \_\_\_\_\_, 199\_\_, is between Metro (METRO); and  
Multnomah County (COUNTY).

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## RECITALS:

1. METRO and COUNTY were two key participants in the preparation of the Metropolitan Greenspaces Master Plan adopted July 1992. The November 1992 bond measure to fund METRO acquisition of Greenspaces raised the issue of METRO's operations and maintenance capability. Consolidation of COUNTY Parks and METRO Greenspaces personnel and policy implementation creates METRO operations and maintenance capability with experienced COUNTY personnel.

2. The COUNTY and METRO have been involved in extensive negotiations regarding transfer of regional parks, recreational facilities, natural areas, golf courses, cemeteries, and trade/spectator facilities presently owned and operated by COUNTY to METRO.

3. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of transfer and consolidation; which expressed the intention of the COUNTY and METRO to approve a formal intergovernmental agreement consistent with those principles; and which anticipated that the formal intergovernmental agreement would be prepared and approved as soon as possible.

4. The Metro Council and the County Commission approved the Memorandum of Understanding.

5. This Agreement has been prepared to implement the Memorandum of Understanding.

////

## **SECTION 1**

### **DEFINITIONS**

In this Agreement, the following terms shall have the following meanings unless the context indicates otherwise:

"Council" or "Metro Council" means the Metro Council provided for in the 1992 Metro Charter, or the lawful successor thereto.

"County" means Multnomah County, Oregon, or the lawful successor thereto.

"County Chair" means the duly elected Chair of the Multnomah County Board of Commissioners, or the lawful successor thereto.

"County Commission" means the Multnomah County Board of Commissioners, or the lawful successor thereto.

"County Facilities" means all park facilities (except Vance Park) and natural areas currently owned or operated by COUNTY, including but not limited to Glendoveer Golf Course; Pioneer Cemeteries; the Multnomah County Exposition Center (EXPO), including any COUNTY-owned property appurtenant to EXPO; and any new acquisitions of natural areas by COUNTY. A complete list of all properties contemplated for transfer is attached and incorporated herein as Exhibit 1.

"EXPO" means the Multnomah County Exposition Center, including any COUNTY-owned property appurtenant thereto.

"Metro" means Metro or the lawful successor thereto.

"Metro ERC" means the Metropolitan Exposition-Recreation Commission.

"Metro ERC Facilities" means the Oregon Convention Center and other convention, trade, or spectator facilities owned by Metro or operated by Metro ERC.

"Metro Executive Officer" or "Executive Officer" means the duly elected Metro Executive Officer provided for in the 1992 Metro Charter or the lawful successor thereto.

"Neighborhood Parks" means those of the County Facilities which are identified as such in Exhibit 1, except Vance Park.

"Other Facilities" means present and future regional parks, natural areas, golf courses, cemeteries, and trade/spectator facilities other than the County Facilities and current Metro and Metro ERC Facilities.

## **SECTION 2**

### **PURPOSE**

The purpose of this Agreement is to provide for a two-phase consolidation of operation, management, and ownership of all regional park facilities, regional natural areas, and trade/spectator facilities presently owned and operated by COUNTY, including but not limited to Glendoveer Golf Course, Pioneer Cemeteries, and EXPO, into the mix of natural spaces and trade/spectator facilities currently owned or operated by METRO, and to provide for METRO operation and management of any Neighborhood Parks operated by COUNTY on a limited basis. The first phase of consolidation shall be of limited duration pending full consolidation, including transfer of ownership of the County Facilities to METRO, with the exception of any Neighborhood Parks. The first phase of consolidation is a management and operation agreement for all County Facilities managed and operated within the current

Multnomah County Recreation Fund. It is understood between COUNTY and METRO that the second phase of consolidation, including transfer of ownership, is of critical importance, and that PHASE I consolidation of operation and management is merely intended to promote a smooth and harmonious transfer of those County Facilities to METRO that are of "metropolitan concern" or otherwise within METRO's authority.

This Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and COUNTY. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever.

### SECTION 3

#### TERMS OF TRANSFER

##### A. Transfer of Operation and Management

Effective January 1, 1994, COUNTY hereby transfers all operational and management rights and responsibilities for the following programs, activities, properties and/or facilities currently budgeted in the Multnomah County Recreation Fund, along with all funds and revenues related to these programs, to METRO:

1. All park facilities (except Vance Park) and natural areas currently owned or operated by COUNTY;
2. Glendoveer Golf Course;
3. Pioneer Cemeteries;
4. EXPO; and



5. Any new acquisitions of regional natural areas by COUNTY subsequent to the date of this Agreement shall be transferred to METRO under the same terms and conditions set out in this Agreement for the other COUNTY facilities.

A complete list of all properties hereby affected is attached and incorporated herein as Exhibit 1.

These programs, activities, and facilities shall henceforth be referred to in this Agreement as the County Facilities, but, all said facilities other than any Neighborhood Parks will be identified exclusively as Metro-operated Facilities to the public and to users of those facilities, effective January 1, 1994. METRO shall have full power and authority to organize, manage, and operate the County Facilities as METRO deems appropriate.

**B. Maintenance of Effort**

METRO agrees to exert its best efforts to operate and maintain the EXPO, cemeteries, parks, recreation facilities, natural areas, established cultural and educational programs, natural and cultural resources, and all related appurtenances being transferred as part of this Agreement in a manner which assures sustainable and continuous public use, safety and enjoyment at a level at least equal to that maintained by the COUNTY prior to the transfer, provided that sufficient funds remain available for such purposes. In the event of a shortfall requiring program curtailment, METRO and COUNTY shall meet to discuss available options. Provided, however, that METRO may suspend swimming or other water-related activities in Blue Lake Park whenever METRO determines that such a suspension would be prudent for health or safety reasons.

C. Real and Personal Property

1. Effective January 1, 1994, COUNTY hereby transfers to METRO the right to beneficial use of all real and personal property comprising the County Facilities, including any personal property associated with the management or operation of the County Facilities. COUNTY shall not take any action with regard to the real property or personal property comprising the County Facilities that would interfere with management and operation of the County Facilities by METRO. During PHASE I of this Agreement, METRO shall list COUNTY as an additional insured on METRO property policies with respect to the County Facilities.

2. During PHASE I of this Agreement, COUNTY shall provide Multnomah County Fleet and Electronics service to provide maintenance and upkeep on all equipment associated with the County Facilities. COUNTY shall provide a standard of maintenance and upkeep at least equal to the standard previously kept by COUNTY for said equipment. COUNTY shall bill METRO for the cost of such services, in the same manner and at the same rate as charged to other COUNTY areas for comparable services. At METRO's option, such services and billing shall continue during PHASE II consolidation.

D. Contracts and Licenses

1. Effective January 1, 1994, COUNTY shall assign to METRO, all contracts, permits, rental agreements, and licenses to which COUNTY is a party and which are assignable without the consent of other parties. After January 1, 1994, these contracts, permits, rental agreements, and licenses shall be subject to management and control by METRO, or Metro ERC, as Metro shall designate.

2. Effective January 1, 1994, COUNTY shall assign to METRO all contracts, permits, rental agreements, and licenses to which COUNTY is a party, the assignment to be effective January 1, 1994, or upon obtaining the consent of the other parties thereto, whichever occurs later. Upon the effective date of assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of METRO, or Metro ERC as Metro shall designate. METRO shall perform all obligations of COUNTY as set forth in the assigned contracts and shall not permit any contract to be defaulted by action or inaction.

E. Multnomah County Recreation Fund

Effective January 1, 1994, COUNTY will transfer to METRO all funds less current obligations contained within the Multnomah County Recreation Fund generated by, or attributed to the County Facilities. Said funds shall include all revenues attributable to the County Facilities, now or in the future, from whatever source. COUNTY represents, and warrants, that all funds currently contained within the Multnomah County Recreation Fund are properly contained within that fund in full compliance with all applicable laws and regulations. By way of example and not as a limitation, transfer of funds under this Agreement shall include the current balances of dedicated trust funds or accounts held by the Parks Division, including the Blue Lake Outdoor Performing Arts Stage Fund, the Oxbow Park Nature Center Fund, the Willamina Farmer Trust Fund, and the Tibbetts Flower Fund, provided, however, that those funds shall be used exclusively for their dedicated purposes, and in accordance with the terms of any applicable trust documents. Metro shall maintain

any special trust funds or accounts in accordance with the requirements of all applicable public budgeting laws.

1. Retention for Incurred Expenses. COUNTY shall retain a maximum of \$100,000 to pay expenses incurred prior to January 1, 1994, but not yet paid. By March 1, 1994, COUNTY shall provide METRO with an accounting of all expenses paid and shall forward any remaining balance to METRO. COUNTY acknowledges that liabilities for Multnomah County Recreation Fund expenditures incurred through December 31, 1993, remain the responsibility of the COUNTY. Payroll, invoices and bills for goods and services incurred prior to January 1, 1994, and consistent with the existing Recreation Fund Budget and special trust fund or account agreements shall be forwarded to the COUNTY for payment. COUNTY agrees to promptly pay all such liabilities and expenses incurred prior to January 1, 1994. COUNTY agrees to hold METRO harmless from liability for Recreation Fund, special trust fund and account expenditures incurred through December 31, 1993. Any expenses incurred prior to January 1, 1994, are to be paid out of the \$100,000 retained to pay such expenses. It is agreed that should an expense incurred prior to January 1, 1994, or a revenue earned or received at any time, be received after the final transfer of funds, the COUNTY will forward the expense or revenue to METRO within 15 days of receipt of any such times and METRO will be responsible to take appropriate action.

2. Natural Areas Acquisition and Protection Fund. The parties agree that maintaining the purpose and integrity of the County's Natural Areas Acquisition and Protection Fund is of the highest importance. The parties agree that the Natural Areas Acquisition and Protection Fund shall be maintained for its stated purpose, in accordance

with Multnomah County Resolution No. 93-338 (attached as Exhibit 2). It is agreed by the parties that the proceeds from any further sales of the property known generically as "the Edgefield property" or "Edgefield Manor" shall be placed within the Natural Areas Acquisition and Protection Fund, consistent with Multnomah County Resolution No. 93-338.

3. Expenditures from Natural Areas Acquisition and Protection Fund. The COUNTY and METRO will cooperate to develop an annual budget proposal for the Natural Areas Fund, to be presented and adopted by the Board of County Commissioners in their annual budget process. The budget approved by the Board of County Commissioners for the Natural Areas Fund shall be consistent with purposes and priorities as identified in the Multnomah County Natural Areas Protection and Management Plan. The COUNTY shall fully reimburse METRO for expenses incurred by METRO for those portions of the Natural Areas Fund budget to be implemented by METRO, including compensation and benefits for COUNTY personnel transferred to METRO whose compensation is currently budgeted out of the fund. Prior to the expenditure of funds for acquisition of land or other easements, METRO shall consult with the COUNTY and receive Board of County Commissioners approval of the acquisition. The Board of County Commissioners shall not withhold approval of acquisitions and expenditures which are consistent with the purposes contained in the Natural Areas Protection and Management Plan.

4. Capital Improvements/ADA Compliance. The parties agree that the COUNTY shall complete and carry out any currently budgeted capital improvements and/or ADA compliance projects planned for the COUNTY facilities, regardless of whether funds for such improvements/projects are budgeted in the Multnomah County Recreation Fund or elsewhere

in the COUNTY's budget. COUNTY shall complete these improvements/projects by transferring the appropriate budgeted funds to Metro upon the effective date of this Agreement, unless the parties agree upon an alternative method of completion.

F. Metro Regional Parks/Expo Fund

1. Effective no later than January 1, 1994, METRO shall establish a new recreation fund as part of the METRO budget, known as the Metro Regional Parks/Expo Fund. All funds formerly in the Multnomah County Recreation Fund shall be transferred to the Metro Regional Parks/Expo Fund. All revenues attributable to the County Facilities, from whatever source, shall be placed within the Metro Regional Parks/Expo Fund. The Metro Regional Parks/Expo Fund shall be spent only on the operation, management, marketing, maintenance, and improvement of the County Facilities, which shall include any overhead or central services charges which METRO attributes to the County Facilities for provision of services by METRO or Metro ERC.

2. In no event shall METRO be required to fund and/or subsidize the County Facilities or the Metro Regional Parks/Expo Fund with funds from any other METRO program, activity, or fund, provided, however, that METRO may, in its sole discretion, and, excepting any Neighborhood Parks, transfer METRO funds to the County Facilities or the Metro Regional Parks/Expo Fund, whenever it determines that it is in the regional interest to do so. In the event that METRO does transfer METRO funds to the County Facilities or the Metro Regional Parks/Expo Fund, METRO may transfer such funds back to METRO whenever and in such a manner as it sees fit. METRO may charge a reasonable rate of interest for METRO funds transferred to the County Facilities or the Metro Regional

Parks/Expo Fund. METRO may transfer funds from one COUNTY facility to another as it sees fit. However, no funds from any other METRO program, activity or fund shall be used for maintenance and operation of any Neighborhood Parks identified in Exhibit 1.

G. Money Transfers, Accounting, and Auditing

1. Receivables. COUNTY hereby assigns to Metro as of January 1, 1994, all COUNTY accounts receivable and other receivables existing as of that date or thereafter accruing which pertain to the County Facilities.

2. Adjustments Following Audit. A portion of COUNTY's official independent audit for FY 1993-94 shall cover all COUNTY operations for the entire period ending December 31, 1993. On completion and acceptance by COUNTY of the portion of the official COUNTY independent audit covering COUNTY for FY 1993-94, adjustment shall be made in the amounts of any funds and receivables transferred pursuant to this Agreement as indicated by the audit so as to bring the amounts retained by COUNTY with respect to any funds applicable to the County Facilities to zero. In the event of excess transfers to METRO, METRO shall refund the amount of the excess to COUNTY as appropriate. In the event of deficient transfers to METRO, COUNTY shall transfer the amount of the deficiency to METRO for use as provided herein. COUNTY shall encourage its auditors to complete the portion of the audit covering the County Facilities as quickly as possible. Any dispute between the parties regarding funds to be transferred shall be resolved pursuant to Section 5 of this Agreement.

3. Event and Concession Bank Accounts. To the extent that COUNTY maintains in its name, or in the name of any of the County Facilities, bank accounts into which

COUNTY deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to COUNTY from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and concessionaires, on January 1, 1994, ownership of the accounts shall be transferred to METRO, or the accounts may be closed and the account balances transferred to new accounts opened by METRO or Metro ERC, or some comparable change may be made, as determined by METRO. COUNTY shall execute whatever documents are necessary to accomplish the change.

4. Financial Reporting. For financial reporting purposes the parties agree that METRO will be the primary government for financial reporting of the activities covered under this Agreement and transferred to METRO as defined in Governmental Accounting Standards Board (GASB) Statement 14. While only EXPO is currently contemplated for management by the Metro ERC component unit of METRO, to avoid future uncertainty regarding the status of any functions transferred, the following states the facts of the transfer (as outlined in GASB Statement 14):

- (a) METRO appoints all members of Metro ERC, pursuant and subject to Chapter 6 of the Metro Code.
- (b) METRO is able to impose its will, as defined in GASB Statement 14, on Metro ERC for operations of EXPO, which includes budgetary, financial, and other management controls.



- (c) Upon the date of transfer, METRO is solely responsible for any financial benefit or burden from the operations and management of the EXPO by Metro ERC.
- (d) All functions transferred to METRO as part of the Agreement which are not managed by Metro ERC are not legally separate entities and METRO holds all the corporate powers as defined in GASB Statement 14, paragraph 15. As such, these functions are to be reported as part of METRO'S primary governmental financial activity.

H. EXPO/Multnomah County Fair

- 1. EXPO shall be managed and operated by METRO by and through its Metropolitan Exposition-Recreation Commission, subject to whatever changes the Metro Council may from time to time make in the management, operation, or existence of its Metropolitan Exposition-Recreation Commission.
- 2. METRO shall assume responsibility for the EXPO master plan process begun by COUNTY. This shall include implementation of the "Portland Exposition Center Facilities Plan," prepared by COUNTY, to the extent feasible as determined by further studies, further METRO/Metro ERC planning efforts, and by the availability of resources for implementation.
- 3. COUNTY represents and warrants to METRO (a) that the current arrangements surrounding the Multnomah County Fair, the Multnomah County Fair Board, and Multnomah County, which, inter alia, require the Fair to pay a fee for the use of EXPO, are lawful, proper, and in full compliance with the provisions of any agreements, deeds,

duties, or contracts, express or implied, which exist regarding the Fair or EXPO, and (b) that Multnomah County has full authority to enter into and carry out this Intergovernmental Agreement insofar as EXPO, the Multnomah County Fair, and all other County Facilities are concerned. The provisions of Section 3(M)(1) shall include any claims made by or on behalf of the Multnomah County Fair, the Multnomah County Fair Board, any users of the Fair, or any parties claiming contractual rights, including claims of any third party beneficiaries, with respect to EXPO, the Fair or the COUNTY's past, present, or future actions with respect to EXPO or the Fair. The Multnomah County Fair shall continue to be the sole and exclusive responsibility of COUNTY. METRO shall continue to make EXPO space and expertise available for the Multnomah County Fair, through a contract(s) with the Multnomah County Fair Board. COUNTY may specify the dates for the fair. COUNTY shall give METRO reasonable notice of such dates consistent with normal business practice.

4. Both the COUNTY and METRO recognize the value of the County Fair to the community and are committed to the future success of the County Fair. Based on the Fair's historical relationship to EXPO, during and for the calendar years of 1994 and 1995 METRO agrees to the following: (a) METRO shall not charge the Fair rent for the use of EXPO; (b) the Fair may maintain its current storage area at EXPO in a manner substantially similar to existing historical practice; (c) METRO shall provide the Fair with staff support services for set-up, breakdown, facility maintenance, and consulting by permanent full-time METRO or Metro ERC employees at no charge, but will pass through any out-of-pocket expenses incurred in connection with the Fair, in accordance with standard Metro ERC policies and practices; (d) Metro Parks staff shall provide greenhouse space, labor, and planting to the

Fair at no charge, in a manner substantially similar to existing historical practice; (e) in the event that COUNTY hires a Fair Manager, METRO shall provide office space at EXPO without rental charge; (f) during the Fair any net concession or parking revenue at the Fair shall be considered revenues of the Fair. In the event that the COUNTY hires a Fair Manager, or other personnel to assist with the Fair, those positions shall be the exclusive responsibility of the COUNTY, and shall be funded in all respects by the COUNTY. Continuation of any special considerations granted to the Fair in this paragraph shall be jointly reviewed by the COUNTY and METRO within the framework of negotiations toward PHASE II transfer of ownership.

I. Park Facilities, Cemeteries, Natural Areas, and Glendoveer Golf Course

All park facilities, natural areas, cemeteries, and golf courses transferred pursuant to this Agreement shall be incorporated into a new Metro Parks and Greenspaces Department, to be established, operated, and managed by METRO; provided, however, that these facilities may be combined for operations purposes with other programs, projects, or operations, as determined to be appropriate by METRO, provided that METRO shall notify COUNTY prior to any major realignments or reorganizations.

J. Personnel

Effective January 1, 1994, all staff presently budgeted in the County Recreation Fund shall be transferred to METRO. METRO agrees that all COUNTY employees transferred to METRO by this Agreement shall be held harmless from any layoffs or reductions in force directly related to the City of Portland/METRO/Oregon Arena Corporation agreement. All COUNTY employees transferred to METRO by this Intergovernmental Agreement shall be

permitted to transfer any accrued vacation time and any accrued sick time with them to METRO, to the extent and in the manner permitted by ORS 236.610(2). COUNTY shall be responsible for any obligations which might exist with respect to accrued compensation time or personal leave, as well as with respect to accrued vacation time in the event that any employee elects not to transfer over 80 hours of vacation time pursuant to ORS 236.610(2). COUNTY shall pay to METRO an amount determined to be the cash equivalent of the amount of vacation time transferred by each employee, in addition to any other funds to be transferred by COUNTY to METRO pursuant to this Agreement. METRO shall provide space in its new Metro Regional Center for the Parks administrative staff transferred as part of this Intergovernmental Agreement. This Intergovernmental Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and the COUNTY. This Intergovernmental Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever. It is the specific intention of the COUNTY and METRO that the rights, if any, of any employees transferred under this Intergovernmental Agreement shall be governed exclusively by ORS 236.610 to 236.650 and adjudicated via the procedures provided by those statutes and no other.

K. User Fees

METRO shall have the sole responsibility and authority to set user fees for any or all of the County Facilities except that METRO shall not increase user fees for County Facilities prior to July 1, 1994, without the joint agreement of the COUNTY and METRO.

L. Excise Tax

METRO shall have the sole responsibility and authority to exact an excise tax on all programs and activities comprising, or taking place at, the County Facilities, except that METRO shall not increase or impose such an excise tax prior to July 1, 1994, without the joint agreement of the COUNTY and METRO. Any excise tax receipts shall not be restricted to the benefit of the County Facilities, but shall be used for any public purpose deemed appropriate by METRO.

M. Indemnification

1. COUNTY, to the maximum extent permitted by law and subject to and within the limits of the Oregon Tort Claims Act; ORS 30.260 to 30.300, shall defend, indemnify and save harmless METRO, Metro ERC, and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, remedial actions, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place prior to January 1, 1994, arising from the operations of the County Facilities. COUNTY's duty of indemnification shall extend to any pollution condition, contamination, fuel leak, discharge, release or hazard which occurred or originated prior to January 1, 1994, or is the result of conditions which were created prior to January 1, 1994.

2. METRO, to the maximum extent permitted by law, subject to and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and

save harmless COUNTY, and its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, remedial actions, fines, suits and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place on or after January 1, 1994, arising from the operations of the County Facilities by METRO or Metro ERC. METRO's duty of indemnification shall extend to any pollution condition, contamination, fuel leak, discharge, release or hazard which occurred or originated on or after January 1, 1994, or is the result of conditions which were created on or after January 1, 1994. Provided, however, that during PHASE I of this Agreement, METRO's duties of indemnification and defense shall be limited to the amount transferred by COUNTY to METRO as provided in Section 3(F)(1).

3. The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit and protection of METRO, Metro ERC, and COUNTY, and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or person other than METRO, COUNTY, and their respective officers, employees, and agents.

N. County Ordinances/Services

1. All COUNTY resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the County Facilities in force and effect on January 1, 1994, shall remain in force and effect with regard to the County Facilities until superseded or repealed by any ordinance, resolution, executive order, procedure or rule duly adopted or

promulgated by METRO, subject, however, to any restrictions contained in paragraphs K and L. In the case of EXPO, METRO may delegate its authority to supersede or repeal previous COUNTY directives to Metro ERC. COUNTY shall cooperate and assist METRO in the implementation of any METRO action to supersede or repeal previous COUNTY directives that may require COUNTY action to amend COUNTY ordinances.

2. METRO shall have full power and authority to enforce any COUNTY ordinances, resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the County Facilities, to the full extent that COUNTY possesses such authority. In the case of EXPO, METRO may delegate its enforcement authority to Metro ERC.

3. Notwithstanding any other provisions herein, COUNTY shall continue to provide any services, including but not limited to, health-related or law enforcement services, that it has previously provided to the County Facilities, including but not limited to the provision of inmate labor services, in at least the same manner and to the same extent that such services were provided prior to transfer. COUNTY may bill METRO for the cost of such services only to the extent that COUNTY bills other COUNTY programs for the cost of such services. In addition, the COUNTY shall continue to pay property assessments on County Facilities and shall continue its annual contribution to the Oregon Historical Society, for the operation of the Bybee-Howell House, until implementation of PHASE II (transfer of ownership). Provided, however, that METRO shall pay the impending sewer assessment and property taxes for Glendoveer Golf Course out of the County Recreation Fund transferred to

METRO. During PHASE I of this Agreement, COUNTY shall provide space for cemetery personnel, including garage and storage space, at no charge.

4. The Multnomah County Parks Advisory Committee shall continue in its present capacity until such time as METRO creates a Regional Parks Advisory Committee. It is anticipated by the parties that the current Multnomah County Parks Advisory Committee shall become an important part of any future Regional Parks Advisory Committee.

O. Transition Team

To ensure a smooth transition of services, a transition team will be established consisting of the Director of Environmental Services from Multnomah County, a representative of the County Chair, the Deputy Executive Officer of METRO, the Metro Council Administrator, and the General Manager of the Metro ERC facilities. This team will be responsible for information sharing among the agencies, resolution of minor contract disputes, and coordination of services. This transition team will meet as needed until PHASE II of this Agreement.

P. Reporting Requirements

METRO shall provide the Director of Environmental Services with a written report on activities within the County Facilities on a quarterly basis. This report shall include a financial status on the COUNTY programs, a summary of activity level at each facility, and a brief narrative of unusual or important issues or situations that have occurred during the reporting period. This report is due to the COUNTY no later than October 25, January 25, April 25 and July 25.



In addition, METRO shall advise the Director of Environmental Services in writing immediately in the event of fee changes, ordinance revisions, significant organizational changes within COUNTY programs, and/or major changes in policy which affect County Facilities or programs.

Q. Neighborhood Parks

The Neighborhood Parks shall be transferred to Metro in accordance with this Agreement for operational and management purposes only. It is understood that the level of maintenance for Neighborhood Parks shall not exceed that provided by the COUNTY at the time of transfer, except as may be required by law. The provisions of Section 7, PHASE II Transfer of Ownership, shall not be construed so as to apply to any Neighborhood Parks. It is anticipated by the parties that operation, management, and possibly, ownership of the Neighborhood Parks shall be transferred by COUNTY to the City of Portland, or some other entity. METRO shall cooperate with any COUNTY directives regarding appropriate transfer of Neighborhood Parks' operation, management, and/or ownership. At all times, METRO's operation and management of any Neighborhood Parks shall be pursuant to this intergovernmental agreement, and shall be fully compensated. METRO may direct any surplus resulting from the operation and management of the other County Facilities towards the cost of operating, managing, and otherwise maintaining the Neighborhood Parks. In the event that any surplus resulting from the operation and management of the other County Facilities is insufficient to cover the cost of operating, managing, and otherwise maintaining the Neighborhood Parks, METRO shall be fully reimbursed for said costs by COUNTY. METRO may, in its discretion, establish a separate Neighborhood Parks Account within the

Metro Regional Parks/Expo Fund referred to in Section 3(E), in order to assure proper segregation of Neighborhood Parks costs.

#### SECTION 4

#### RECORDS AND INFORMATION

A. County Records Requested by Metro/Metro ERC

If requested by METRO or Metro ERC, and to the extent permitted by law, COUNTY shall provide to METRO or Metro ERC either the originals or copies of any records in its possession regarding the County Facilities, including any records in any electronic format. The requesting party shall reimburse the provider for the reasonable costs of providing the records or copies thereof, if billed by the provider. All original records provided under this subsection shall remain the property of the provider, even though in the possession of Metro ERC or METRO. Metro ERC and METRO shall not destroy or otherwise dispose of the original records without the prior written consent of the provider.

B. Records and Information to be Provided in Advance of Effective Date

In addition to any records requested by METRO or Metro ERC, COUNTY shall provide the following records and information as soon as possible, and in no event later than December 1, 1993:

1. A specific list of all funds to be transferred, their financial history, current fund balance, and restrictions on usage and collection, if any.
2. An inventory of all fixed assets, including depreciation schedule and book value.

3. An inventory of all personal property to be transferred, including any maintenance agreements.
4. A list of all current contracts applicable to the County Facilities, including but not limited to service, vendor, and exhibitor contracts, with copies attached.
5. A compilation of all policies, ordinances and regulations which govern the operations of the County Facilities.
6. A list of any unwritten agreements, practices, or understandings which customers of the County Facilities may expect to be continued.
7. A list of all staff to be transferred, including payroll records, general ledger account balances, current COUNTY classifications, job descriptions, and any current assignments.
8. A list of current or foreseen assessments against property.
9. Any estimates or studies, complete or incomplete, of any structural improvements needed or recommended for the COUNTY facilities, including any safety recommendations.
10. A list of all services provided by the COUNTY to the COUNTY facilities by other COUNTY departments or divisions, and any internal COUNTY charges imposed for such services.
11. A description of any known environmental hazards or exposures, including but not limited to underground fuel tanks, PCBs, and asbestos.

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## SECTION 5

### DISPUTE RESOLUTION

#### A. Exhaustion of Dispute Resolution Process Required

Neither party shall resort to litigation to enforce any of the terms of this agreement unless and until the dispute resolution process established in this section has been completed, provided, however, that a party may institute litigation in a court of competent jurisdiction to require a party to participate as provided herein.

#### B. Procedure

In the event of a dispute arising under this Agreement between the parties, the parties shall first attempt to resolve the dispute by negotiations with each other in good faith. In the event that such negotiations do not provide a mutually-agreeable settlement, either party may initiate the following dispute resolution process:

1. The initiating party shall give written notice of initiation of dispute resolution proceedings to the Metro Executive Officer, to the County Chair, and to a person mutually agreed to by the Metro Executive Officer and the County Chair. The three together shall constitute the Dispute Resolution Committee. The notice shall identify the dispute as to which the dispute resolution process is being initiated.

2. Not later than fifteen (15) days after receipt of the notice of initiation, each party to this Agreement may submit a written statement to the Dispute Resolution Committee stating the party's position on the dispute.

3. Not later than thirty (30) days after notice of initiation, the Dispute Resolution Committee shall decide on a resolution of the dispute and shall notify the parties to this

Agreement of the resolution. Decisions of the Dispute Resolution Committee shall be by majority vote.

4. Decisions of the Dispute Resolution Committee shall be final and binding on the parties unless, within 60 days of receipt of the decision of the Committee, the governing board of either party by duly adopted resolution gives written notice of its rejection of the decision.

## **SECTION 6**

### **REMEDIES**

In the event a party fails to comply with any provision of this Agreement, then any other party shall be entitled to any remedy available at law or in equity, provided that the party has first exhausted its remedies under Section 5 of this Agreement. The termination of this Agreement shall not prevent a party from receiving any additional remedy not inconsistent with the events specified to occur on termination.

## **SECTION 7**

### **TERMINATION**

#### **A. Termination by Mutual Agreement**

The parties may terminate this Agreement at any time prior to PHASE II transfer of ownership by mutual written agreement. The procedure on termination by mutual agreement shall be determined by the termination agreement.

**B. Automatic Termination**

In the event that the parties do not reach a mutual written agreement for PHASE II transfer of ownership by January 1, 1996, this Agreement shall terminate effective June 30, 1996. On the effective date of the termination, the events described in subsection (D)(1-9) of this Section shall occur.

**C. Unilateral Termination**

In the absence of a signed written agreement among the parties hereto then in existence for PHASE II transfer of ownership, or a signed written termination agreement pursuant to paragraph A of this section, then COUNTY or METRO may, by duly adopted resolution of its governing body, initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective six (6) months after the date of the notice. On the effective date of the termination, the events described in subsection (D)(1-9) of this Section shall occur.

**D. Termination Procedure**

In the event of termination, subject to compliance with any statutory requirements, the following shall occur:

1. After the date of termination, all revenues from and expenditures for the County Facilities shall be treated as COUNTY revenues and expenditures, except to the extent that METRO has transferred METRO or Metro ERC funds to the County Facilities;
2. All METRO and Metro ERC accounts receivable and other receivables related to County Facilities existing on the termination or thereafter accruing shall be assigned to COUNTY, and COUNTY shall be responsible for payment of all METRO and Metro ERC

accounts payable and other obligations existing as of that date or thereafter related to the County Facilities;

3. All monies in METRO and Metro ERC funds related to County Facilities shall become the property of COUNTY and shall be transferred to COUNTY, with the exception of any METRO or Metro ERC funds which have been transferred to the County Facilities, said transfer shall be accomplished in substantially the same manner in which funds were transferred to METRO originally;

4. All event and concession bank accounts related to the County Facilities shall be transferred to COUNTY subject to all outstanding checks or authorized demands for payment issued by METRO prior to the termination date;

5. All records related to County Facilities shall become the property of COUNTY and shall be transferred to COUNTY;

6. COUNTY shall comply with ORS 236.610 et. seq., to the extent applicable, with respect to all personnel whose positions are included in the budgets for County Facilities;

7. All contracts, permits, rental agreements, and licenses or portions thereof related to the County Facilities, or fixed assets or personal property funded by the County Recreation Fund shall be assigned to COUNTY;

8. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of County Facilities and Other Facilities operated by METRO or Metro ERC shall be carried out in good faith by the parties hereto; and

9. Any dispute between the parties regarding carrying out the requirements of subsection (D)(1-9) of this Section shall be resolved pursuant to Section 5 of this Agreement.

## SECTION 8

### PHASE II TRANSFER OF OWNERSHIP

#### A. General

This Agreement contemplates that, effective no later than July 1, 1996, COUNTY shall transfer to METRO full ownership of those of the County Facilities which METRO has determined are public cultural, trade, convention, exhibition, sports, entertainment, or spectator facilities, or parks, open spaces, or recreational facilities of "metropolitan concern." Neighborhood Parks identified in Exhibit 1 are intended to be transferred to the City of Portland during PHASE I, and in no event shall they become the property of METRO. Upon the effective date of a signed written agreement for PHASE II TRANSFER OF OWNERSHIP, the provisions of PHASE I consolidation shall no longer apply, except those of which may be specifically incorporated or referenced in any PHASE II agreement, or those provisions which by their specific terms go beyond PHASE I.

#### B. PHASE II Procedure

1. No later than July 1, 1995, METRO shall determine, by whatever procedures are required by the 1992 Metro Charter, if any, which of the County Facilities are public cultural, trade, convention, exhibition, sports, entertainment, or spectator facilities, or parks, open spaces, or recreational facilities of "metropolitan concern," such that full METRO-ownership of such facilities would be appropriate under the 1992 Metro Charter.



2. No later than July 1, 1995, METRO and COUNTY shall initiate negotiations for full transfer of ownership of those facilities identified as appropriate for METRO ownership and control. METRO and COUNTY shall bargain in good faith over the transfer of ownership of such facilities.

3. In the event that a signed mutual written agreement for PHASE II transfer of ownership has not been entered into by January 1, 1996, this Agreement shall terminate as provided in Section 7(B).

## **SECTION 9**

### **AUTHORITY TO MAKE DECISIONS**

This Agreement provides for various approvals, waivers, executions of further documents implementing this Agreement, or other decisions or actions to be made or taken on behalf of COUNTY and METRO hereunder. Except as otherwise specifically provided in this Agreement, such approvals, waivers, executions, or other decisions or actions shall be deemed made or taken if in writing and executed by the County Chair, if on behalf of COUNTY, and by the Metro Executive Officer, if on behalf of METRO. Any amendments to this Agreement and any PHASE II transfer of ownership agreement must be approved by the County Commission and the Metro Council.

## **SECTION 10**

### **ASSIGNMENT AND TRANSFER**

Except as provided herein, this Agreement and any property to be transferred by its terms, shall not be assignable or transferable by either party or by operation of law except with the written consent of the other party. A consenting party may impose any conditions

on the consent that are reasonable under the circumstances. The assignee or transferee shall be bound by all the provisions of this Agreement. The assignor or transferor shall not be relieved of any obligations under this Agreement unless the written consent of the other party expressly so provides. Provided, however, that assignment and transfer of the facilities identified as Neighborhood Parks to the City of Portland is contemplated by this Agreement, and the parties shall cooperate to accomplish such assignment and transfer.

#### **SECTION 11**

#### **ATTORNEYS' FEES**

In the event of a suit or action to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees and expenses, including the cost of depositions and expert witnesses, at trial and on appeal of the suit or action, in addition to all others sums provided by law.

#### **SECTION 12**

#### **NOTICE**

Any notice provided for hereunder shall be deemed sufficient if deposited in the United States mail, certified mail, return receipt requested, postage prepaid, addressed either to the following address or to such other address or addresses as the recipient shall have notified the sender of by notice as provided herein:

**METRO:** Executive Officer  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

With a copy to:

Clerk of the Council  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Office of General Counsel  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

COUNTY: County Chair  
Multnomah County  
1120 S.W. Fifth Avenue, Rm. 1410  
Portland, OR 97204

With a copy to:

County Counsel  
Multnomah County  
1120 S.W. Fifth Avenue, Rm. 1530  
Portland, OR 97204

Notice hereunder shall be deemed received three (3) days after mailing as provided in this Section or on actual delivery to the addressee, whichever occurs first.

### SECTION 13

#### EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for METRO, Metro ERC, and COUNTY to execute further documents enabling implementation. Each of them shall execute such further documents and take such other steps as are reasonably necessary or appropriate to implementing the provisions hereof.

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**SECTION 14**

**WAIVERS**

The waiver of any provision of this Agreement, whether a waiver as to a particular application of the provision, or as to all applications of the provision, shall be binding on the party making the waiver only if in writing and executed by the party. Unless otherwise expressly provided in the written waiver, the waiver by a party of performance of a provision as to a particular application shall not be a waiver of nor prejudice the party's right to require performance of the provision as to other applications or of any other provision.

**SECTION 15**

**ENTIRE AGREEMENT**

This Agreement is the entire agreement between the parties. This Agreement may not be modified except by a written amendment dated and approved and signed by all the parties hereto then in existence. No party shall be bound by any oral or written statement

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or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM

MULTNOMAH COUNTY

\_\_\_\_\_  
Multnomah County Counsel

By: \_\_\_\_\_  
Beverly Stein, County Chair

Date: \_\_\_\_\_

APPROVED AS TO FORM

METRO

\_\_\_\_\_  
Metro General Counsel

By: \_\_\_\_\_  
Rena Cusma,  
Executive Officer

Date: \_\_\_\_\_

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