

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 94 -2053  
THE EXECUTIVE OFFICER TO ENTER )  
INTO AN AGREEMENT WITH JAMES A. ) Introduced by Rena Cusma  
AND BEATRICE BOTTGER TO OPTION ) Executive Officer  
PROPERTY )

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

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Option To Purchase Real Property Agreement is part of Metro's Options Demonstration Project approved by Council Resolution No. 93-1832; and

WHEREAS, Funds to obtain options from willing seller to purchase land are allocated via Council Ordinance No. 93 - 511; and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, The property is owned by James A. and Beatrice Bottger, as indicated in Exhibit A, is in a target area as set out in Resolution No. 94 - 2011A which referred a 135.6 million dollar bond measure for public consideration in spring 1995; now, therefore,

BE IT RESOLVED,

That Metro Council authorizes the Executive Officer to enter into an agreement with James A. and Beatrice Bottger as attached in Exhibit A.

ADOPTED by Metro Council this 22nd day of December, 1994.


  
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Judy Wyers, Presiding Officer

EXHIBIT A

OPTION TO PURCHASE REAL PROPERTY

THIS OPTION AGREEMENT (the "Agreement") is made and entered into by and between James A. and Beatrice Bottger, husband and wife, (the "Seller") and Metro, a municipal corporation of the State of Oregon organized under Oregon Revised Statutes, Chapter 268, and the 1992 Metro Charter (the "Buyer"), this 17th day of November, 1994.

Recitals:

1. Metro is the elected regional government for urban Multnomah, Washington, and Clackamas counties responsible for planning issues of region-wide concern.
2. This Option Agreement is part of Metro's 1993-94 Options Demonstration Project to obtain options from willing sellers to purchase land that can become part of the interconnected Greenspaces system.
3. The intent of this Option Agreement is for Metro to secure Seller's certain real property for recreational, open spaces, wildlife habitat, and park purposes as part of regional Greenspaces.
4. Metro intends to seek alternative means, such as grants, intergovernmental agreements, and a regional bond levy, to fund the purchase price of Seller's real property established in this Agreement to preserve the Property in public ownership for the above-stated purposes.

Agreements:

1. Grant of Option. Seller, in consideration of the sum of \$5,000.00, receipt and sufficiency of which is hereby acknowledged by Seller, does hereby grant to Buyer the sole and exclusive option to purchase the real property described in Exhibit "A" attached and incorporated by this reference into this Agreement (the "Property") in the manner and for the price stated in this Agreement.
2. Option Terms.
  - 2.1 Term. The term of the option shall commence on the effective date and shall continue until August 1, 1995. The Seller shall not withhold his grant of an extension of the term of this option if the Buyer can show intent to close and reasonable cause for any delays in its performance.
  - 2.2 Exercise of Option. Buyer may exercise this option by written notice to Seller at any time during the term stating that Buyer has elected to exercise the option. Upon exercise of this option, Buyer shall be obligated to purchase the Property from Seller and Seller shall be obligated to sell the Property to Buyer for the price and in the manner herein set forth.
  - 2.3 Failure to Exercise Option. If Buyer fails for any reason to exercise this option in the manner set forth herein, Buyer shall have no further claim against or interest in the Property or any of the Option Money Payments, unless Buyer is entitled to a refund of the Option Money Payments under another provision of this Agreement. In the event of the failure to exercise the option, Buyer shall provide Seller with any instruments that

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Seller reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this option.

3. Option Money. In payment for Seller's grant of this option, Buyer has paid or will pay Seller the following "Option Money Payments": (a) At the execution of this Agreement, Buyer has paid Seller the cash sum of \$5,000.00 mentioned in Section 1; and (b) if Buyer elects to extend the option term under Section 2, Buyer will pay Seller the cash sum of \$5,000.00.
4. Purchase Price and Terms. If the Buyer exercises the option, the purchase price for the Property shall be the sum determined by an appraisal performed by an appraiser licensed in the State of Oregon and mutually selected by both parties. Payment shall be less the \$5,000.00 option payment made to Seller pursuant to Section 2 and less any additional option payments made as referred to in Section 3. The entire balance of the purchase price shall be paid at Closing.

The above mentioned appraisal notwithstanding, Seller sets a Minimum Sale Price of \$2,100,000.00 to be allocated to show a value of \$1,860,000.00 for the land and \$240,000.00 for the timber crops available. In the event the appraisal of the fair market value of the Subject Property indicates a value of at least 80% of the Minimum Sale Price then the sale shall go forward to closing at the Minimum Sale Price. In the event the indicated value is less than 80% of the Minimum Sale Price then Metro is no longer obligated by this agreement to proceed to closing but may still elect to proceed to closing at the Minimum Sale Price, at their sole discretion, by written notice to the Seller. Lastly, if the appraisal of the fair market value indicates a value greater than the Minimum Sale Price then the parties agree to proceed to closing at the greater value.

5. Recording. Within 5 days after Seller signs option, Seller shall execute, acknowledge, and deliver to Buyer a memorandum in the form attached as Exhibit B. Buyer will record the memorandum.
6. Possession. Possession of the Property shall remain with Seller, subject to the Covenants in this Agreement, until Closing. Buyer shall be entitled to exclusive possession of the Property on and after the Closing Date.
7. Access to Property. Seller grants to Buyer and its agents the right to enter on the Property at any /reasonable times before the Closing Date for the purpose of conducting tests or studies that Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Seller shall cooperate with Buyer in making such tests and studies. Buyer and/or Buyer's agents who are to enter onto the property are to notify the Seller at least two days in advance to give the Seller the opportunity to accompany the Buyer's agents as they perform their studies and/or tests. No soil tests or drilling shall be undertaken without first obtaining Seller's approval. Buyer shall not interfere with or disturb the rights of any tenants of Seller in possession of any portion of the Property. Buyer shall protect, defend, and hold Seller harmless from any loss, liability, or damage to persons or property arising out of or related to Buyer's activities on the Property. If Buyer fails to exercise the option and purchase the Property, Buyer shall fully compensate Seller for any physical damage to the Property or charge on it attributable to Buyer's activities pursuant to this paragraph. In the event Buyer fails to exercise the option, Buyer shall deliver to Seller a legible copy of any reports, studies, and drawings owned by Buyer that relate to the Property.

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8. Covenants of Seller. Seller acknowledges that the Covenants of Seller contained in this Agreement, including the Covenants contained in this Section 7 (the "Covenants"), are material inducements to Buyer to enter into this Agreement. The Covenants specifically delineated in this section are the following:

8.1 Information. Seller agrees to deliver to Buyer, within 20 days after the effective date, photocopies of all documents related to the use or ownership of the Property that Seller possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a like nature.

8.2 Maintenance. Before the Closing Date, Seller shall maintain the Property in the same condition as it now exists, ordinary wear and tear expected, and shall not cause or permit any waste.

8.3 Seller's Promise to Remove Personal Property. Before the Closing Date, Seller promises to remove or cause to be removed from the subject Property at Seller's expense any and all personal property and/or trash, rubbish, or any other unsightly or offensive materials, unless otherwise agreed to in writing by Buyer.

8.4 Covenant to Maintain Property in Natural State. Seller, its successors and assigns hereby covenants, promises, agrees to maintain the Property to retain (specific features needed undisturbed).

8.5 Ownership. During the term, Seller shall not sell, contract to sell, assign, lease or otherwise transfer the Property or any part of it, unless it is transferred subject to this option, nor grant an option to any third party to acquire all or any portion of it.

9 Seller's Representations.

9.1 Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the subject Property in accordance with this Agreement.

9.2 The subject Property has legal vehicular access to a public road.

9.3 There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the subject Property, or any portion thereof, affect the value of the subject Property or any portion thereof, or subject an owner of the subject Property, or any portion thereof, to liability.

9.4 There are no:

(a) Intended public improvements or private rights which will result in the creation of any liens upon the subject Property or any portion thereof;

(b) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the subject Property or any portion thereof;

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- (c) Actual or impending mechanic's liens against the subject Property or any portion thereof; and
  - (d) Notices or other information giving Seller reason to believe that any conditions existing on the subject Property or in the vicinity of the subject Property or in ground or surface waters associated with the subject Property may have a material effect on the value of the Property or subject the owner of the Property to potential liabilities under environmental laws.
- 9.5 There is no lease, license, permit, option, right of first refusal, or other agreement, written or oral, which affects the subject Property or any portion thereof.
- 9.6 Neither the grant nor the exercise of the option will constitute a breach or default under any agreement to which Seller is bound and/or to which the subject Property is subject.
- 9.7 Hazardous Substances. For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9). Seller warrants, represents, and covenants as follows:
- (a) To the knowledge of Seller, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;
  - (b) Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any Hazardous Substances in violation of any environmental laws of the federal or state government; and
  - (c) To the knowledge of Seller, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing.
- 9.8 Status of Seller. Seller warrants that Seller is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

Each of the above representations is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow. Seller shall indemnify, defend with counsel of Buyer's choice and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of the breach of any of Seller's warranties, representations, and covenants. Upon close of escrow, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer's counsel stating that each of the above representations is true and current as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the

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problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the subject Property, or (b) defer the Closing Date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have the right to retain the option consideration without thereby waiving Seller's right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.

11. Property Taxes and Expenses. During the term of this option, Seller shall pay all taxes, assessments, and expenses related to the Property. Property taxes shall be prorated as of the Closing Date.

12. Closing.

12.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Buyer, but in all events the Closing shall occur within 120 days after the date that the exercise notice is given. The escrow for the Closing shall be established at the office of Transamerica Title Insurance Co. (the "Title Company"), at 111 SW 5th Ave./Suite 2200, Portland, OR 97204.

12.2 Closing Obligations. On the Closing Date, Seller and Buyer shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Seller and Buyer.

12.2.1 Seller shall deposit the following:

- (a) The conveyance documents described in Section 11, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that Seller is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445;
- (c) Such documents as Buyer or the Title Company may require to evidence the authority of Seller to consummate this transaction; and
- (d) Such other documents and funds, including (without limitation) escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.

12.2.2 Buyer shall deposit the following:

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- (a) The cash payment specified in Section 4, minus any credits available to Buyer under the terms of this Agreement;
- (b) Such documents as Seller or the Title Company may require to evidence the authority of Buyer to consummate the transaction contemplated; and
- (c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Buyer to close the sale and purchase of the Property in accordance with this Agreement.

12.3 **Costs.** Buyer and Seller each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Buyer shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

12.4 **Prorations.** All items of expense incurred by Seller with respect to the Property shall be paid by Seller at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date.

12.5 **Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than 45 days after the Closing Date, Seller shall cause the Title Company to issue at Seller expense its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the purchase price, insuring fee simple title to the Property vested in Buyer, subject only to the permitted exceptions.

13. **Conveyance.** At the Closing, Seller shall execute, acknowledge, and deliver to Buyer a Statutory Warranty Deed conveying the Property to Buyer, subject only to the permitted exceptions.

14. **Waiver.** Failure by Seller or Buyer to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

15. **Successors and Assigns.** Subject to the limitations on Seller's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Seller and Buyer. Buyer may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Seller. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement. Further, the assignee shall be obligated to use the land as described in the Recitals #3 herein, and shall be precluded from using or selling the property for any commercial use, for any residential development or for any other use other than intended by this agreement of the parties.

16. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: James and Bea A. Bottger  
6315 NW 185th Ave.

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Portland, Or. 97229

To Buyer: Metro  
600 NE Grand Ave.  
Portland, OR 97232  
Attn: Greenspaces/Nancy Chase

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

17. Attorney Fees. If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.
18. No Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.
19. Risk of Loss. Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the exercise notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within 15 days following receipt by Buyer of written notice from Seller of such casualty or condemnation and Seller will return to Buyer the Option Money Payments previously paid.
20. Integration, Modification, or Amendments. This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Seller and Buyer, in writing.
21. Representation. Seller and Buyer have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 16, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.
22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
23. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance title to the subject Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.
24. Governing Law; Interpretation. This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or

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[Signature]

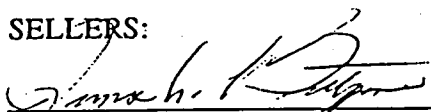


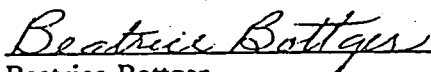
unenforceable as written, Seller and Buyer intend that (a) that portion of this Agreement be enforced to the extent permitted by law, and (b) the balance of this Agreement remain in full force and effect.

- 25. Time is of the Essence. Time is of the essence of this Agreement.
- 26. The property described in this instrument may not be within a fire protection district protecting structures. The property is subject to land use laws and regulations which, in farm or forest zones, may not authorize construction or siting of a residence and which limit lawsuits against farming or forest practices as defined in ORS 30.930 in all zones. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and existence of fire protection for structures.

Executed on the day and year first above written.

SELLERS:

  
\_\_\_\_\_  
James A. Bottger

  
\_\_\_\_\_  
Beatrice Bottger

BUYER:

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

Attachments:

Exhibit A - Property

Exhibit B - Form of Memorandum

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### ADDENDUM TO OPTION TO PURCHASE REAL PROPERTY

Reference is hereby made to that certain Option to Purchase Real Property by and between James A. and Beatrice Bottger, husband and wife, (the "Seller") and Metro, a municipal corporation of the State of Oregon organized under Oregon Revised Statutes, Chapter 268, and the 1992 Metro Charter (the "Buyer"), dated the 17th day of November, 1994 and by that reference this Addendum is hereby made a part thereof.

The purpose of this Addendum is to make certain changes and/or additions to the above described agreement between the parties. Any provisions of this agreement not specifically altered by the following language shall remain in full force and effect.

A. The sum set for the Grant of Option in Condition 1 and referred to in Conditions 3(a) and (b), and in Condition 4 is hereby changed to \$3,700.00.

B. The Minimum Sale Price set in Condition 4 is hereby changed to \$1,546,200.00 of which ~~\$240,00.00~~ is to remain as the timber allocation and the difference of \$1,306,200.00, for the purposes of ~~this~~ this option, becomes the land value allocation.  
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SELLERS:  
Dated: November 30, 1994

James A. Bottger  
James A. Bottger

Beatrice Bottger  
Beatrice Bottger

BUYER:  
Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 94-2053, AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT WITH JAMES A. AND BEATRICE BOTTGER TO OPTION PROPERTY

Date: December 14, 1994

Presented by: Councilor Hansen

**COMMITTEE RECOMMENDATION:** At its December 7, 1994 meeting the Regional Facilities Committee voted 4-0 to recommend Council adoption of Resolution No. 94-2053. Councilors Hansen, McFarland, Moore, and Washington voted in favor. Councilor Gates was absent.

**COMMITTEE DISCUSSION/ISSUES:** Discussion of this resolution took place in Executive Session. Council will be briefed at its December 22 meeting, also in Executive Session, on the specific points of this resolution concerning options for Greenspace lands.

There was no substantive committee discussion in open session.