

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95-2215
EXECUTION OF TWENTY-SIX INTER-)
GOVERNMENTAL AGREEMENTS WITH) Introduced by Mike Burton,
LOCAL PARKS PROVIDERS FOR THE) Executive Officer
LOCAL SHARE OF THE OPEN SPACES)
PROGRAM BOND MEASURE)

WHEREAS, Measure 26-26 as referred to the voters provided for \$25 million from Metro General Obligation Bond proceeds for local share projects to be administered by 26 local parks providers throughout the Metro area; and

WHEREAS, The Metro voters approved Measure 26-26 on May 16, 1995; and

WHEREAS, Pursuant to Measure 26-26, Metro desires to enter into intergovernmental agreements with the 26 local share parks providers to provide for the administration of the local share projects; now, therefore,

BE IT RESOLVED,

1. That the Metro council authorizes the executive officer to enter into intergovernmental agreements in a form substantially similar to attached Exhibit "A" with the following local parks providers for the maximum amounts specified:

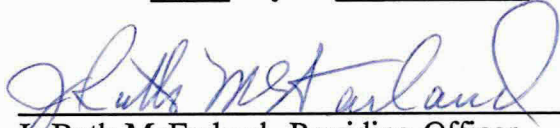
<u>Jurisdiction</u>	<u>Allocation</u>
Clackamas County	\$ 1,876,235
North Clackamas Parks and Recreation District	1,043,025
City of Gladstone	156,857
City of Happy Valley	35,305
City of Lake Oswego	697,166
City of Milwaukie	349,020
City of Oregon City	268,322
City of Rivergrove	5,673
City of West Linn	333,385
City of Wilsonville	218,222
Multnomah County	3,401,545
City of Portland	7,480,868

City of Gresham	\$ 1,164,474
City of Troutdale	257,327
City of Fairview	169,109
City of Wood Village	169,109
Washington County	949,049
Tualatin Hills Parks and Recreation District	2,315,771
City of Beaverton	1,372,654
City of Cornelius	147,186
City of Durham	28,538
City of Forest Grove	321,226
City of Hillsboro	989,745
City of Sherwood	103,705
City of Tigard	757,954
City of Tualatin	388,528

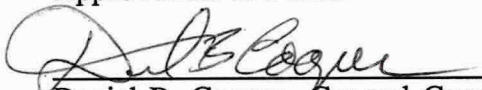
TOTAL \$25,000,000

2. That the executive officer pursuant to the recommendation of the Metro general counsel may enter into agreements with local share providers that contain different provisions that are not material variances to the form attached hereto as Exhibit "A" that reflect special circumstances or conditions applicable to individual local share parks providers.

ADOPTED by the Metro Council this 5 day of Oct., 1995.


 J. Ruth McFarland, Presiding Officer

Approved as to Form:


 Daniel B. Cooper, General Counsel

gl
 1244

I HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Cathy Rose
Clerk of the Metro Council

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 95-2215
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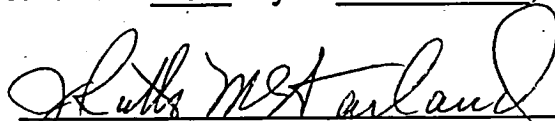
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TOTAL	\$25,000,000

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 Ruth McFarland, Presiding Officer

Approved as to Form:


 Daniel B. Cooper, General Counsel

gl
 1244

COPY



METRO

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

April 24, 1995

Sent to all Parks Providers' Counsel
See Our File: 14.8.4.6

Scott Parker, Attorney
North Clackamas Parks and Recreation District
Courthouse Annex
906 Main Street
Oregon City, OR 97045-1819

Re: Metro Open Space Bond Measure

Dear Scott:

Metro is seeking voter approval of a \$135.6 bond measure on the May 16, 1995, ballot. The measure would authorize Metro to issue bonds for acquisition of open space, trails and stream protection. The bond issue allocates \$25 million for local parks projects. Attached is a copy of the Open Space Acquisition Bond Measure, and the Greenspaces General Obligation Bond Measure Proposed Local Share Guidelines adopted by the Council for the bond measure. I have been asked by Metro staff to prepare a form of Intergovernmental Agreement for Metro use if the bond issue is approved. Your client, North Clackamas Parks and Recreation District, has submitted a proposal for the use of funds to Metro and the project has been approved by the Metro Council.

The purpose of my letter is to share my thoughts with you about the terms and conditions for intergovernmental agreements Metro will enter into with the local parks providers to provide for the distribution of funds. The IGA would be modeled after the existing state and local agreements for land and water conservation projects which are utilized by the State of Oregon to pass-through to local governments federal funds for land and water conservation. However, in order to provide more flexibility and to address local issues, we believe modifications to those agreements would be advisable.

The project description for the agreement would be the project submittal from the local government that has been approved by the Metro Council. The term of the agreement would envision that local governments would have two years to complete the project or show substantial progress toward the project completion. Extensions would be subject to routine administrative approval when need was shown. Flexibility would be maintained by allowing the local parks providers to make findings that the project was no longer feasible and after utilizing a public process, pick an alternative within its boundaries that is consistent with the

April 24, 1995
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adopted local share guidelines. Alternative projects will be subject to Metro review and approval at an administrative level with approval not to be unreasonably withheld. Only in the event that a local government determined that the proposed project was not feasible and that it no longer desired to or was able to find a substitute project in its boundaries would the money be returned to Metro for reallocation consistent with the terms and conditions of the bond issue. There would need to be language included that allows for termination of the agreement if no action is taken by a local provider. Such a termination could occur only after 90 days notice from Metro.

Unlike the state funding agreements for land and water conservation, Metro will be able to supply funds for purchase of properties at the closing of the purchase transaction provided that the local government notifies Metro of the closing date in a reasonable amount of time prior to the need of funds. Other expenditure of bond proceeds for capital improvements, etc., will be invoiced to Metro with reimbursement from bond funds within 30 days.

Other conditions that Metro would anticipate are based on the local share guidelines. Signage giving credit to the Metro open spaces program for land and other improvements as well as a requirement for media acknowledgment on all communications will be similar to the land and water conservation documents. Operation and maintenance of any facility will be the local government responsibility with Metro's liability limited to the payment of the funds agreed to as project costs.

It is also anticipated that standard audit requirements, billing and invoice procedures, and payment transfers procedures using electronic transfers, etc., would be incorporated either in the document or in administrative procedures that would be prepared to be consistent with the document.

I anticipate that the first draft of an IGA containing these provisions will be available for distribution by the end of April.

Yours very truly,

/s/ DANIEL B. COOPER

Daniel B. Cooper
General Counsel

gl
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Attachments

Project: Open Spaces Program
Contract No.

INTERGOVERNMENTAL AGREEMENT
Open Spaces Bond Measure
Local Share Component

This Agreement dated this _____ day of _____ 1995, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the _____, located at _____, (hereinafter referred to as "Recipient"), and shall remain in full force and effect for the period September 1, 1995, to September 1, 1998, (unless extended as provided for herein).

W I T N E S S E T H:

WHEREAS, The electors of Metro approved a ballot measure on May 16, 1995, authorizing Metro to issue \$135.6 million in bonds for Open Spaces, Parks, Trails and Streams (the "Measure"); and

WHEREAS, The Measure provided that \$25 million from bond proceeds be expended by local parks providers for specified projects; and

WHEREAS, Recipient is a local parks provider who has received approval for funding for project(s) as specified in the Measure; and

WHEREAS, Metro and Recipient desire to enter into this Agreement to provide for funding of Recipient's project(s) subject to terms and conditions as provided for in the Measure;

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

1. Project Declaration

Metro hereby approves the Project proposal(s) and authorizes Recipient to proceed with the Project in accordance with the Scope of Work included as Attachment "A." All real property interests acquired shall be held in the name of Recipient.

2. Funding

Metro's contribution to the Project(s) is limited to \$_____. Payment of funds by Metro to Recipient will be subject to the procedures set forth in Attachment "B" of this Agreement.

3. Funding Limitation

Metro through the approval of the Measure and the sale of bonds has established this Agreement with the sole purpose of implementing the Metro Open Spaces Program through funding of this Project. Therefore, Metro neither intends nor accepts any direct involvement in this Project which can or could be construed to result in supervisory responsibility during the course of acquisition or construction, and upon completion of the Project and payment of funds as provided for herein there will be no further obligations on the part of Metro.

4. Funding Requirements

Metro has committed to pay from bond proceeds the amount specified for the approved project(s) described in Attachment "A." Recipient may substitute a different project only if the following conditions are met:

a. Recipient through its governing body must find that one or more of the projects described in Attachment "A" have become degraded, are cost prohibitive or are otherwise infeasible.

b. Recipient through its governing body shall conduct a public process and determine the substitute project consistent with the provisions of the Measure and the Local Share Guidelines.

c. The substitute project is subject to administrative approval by Metro's Regional Parks and Greenspaces Department Director, such approval shall not be unreasonably withheld. Metro will designate the name of the Department Director in writing at the time this Agreement is executed. Thereafter, Metro may give written notice to Recipient of any change in the Department Director.

d. Metro's financial obligation under this Agreement shall not be increased.

Recipient agrees to comply at all times with provisions of the Measure and the adopted Local Share Guidelines which appear as Attachment "C" to this Agreement and by this reference are made a part hereof.

5. Term

Metro's obligation to provide funds pursuant to this Agreement shall terminate September 1, 1998. It is the intent of the parties that Recipient will have completed the project(s) and all Metro funding obligated under this Agreement shall have been paid prior to such date. However, in the event of unforeseen circumstances that cause Recipient to be delayed in completing the project(s), Recipient is entitled upon giving 30 days written notice to Metro to extend Metro's obligations pursuant to this Agreement for an additional six

months. More than one extension may be granted if necessary to complete the project(s). Recipient must receive approval of the extension from Metro's Regional Parks and Greenspaces Department Director. Metro may deny an extension if it finds that Recipient is not making good faith efforts to complete the project(s) and that the need for an extension is due to Recipient's neglect of the project(s). Any denial of an extension is not effective for 10 days after receipt of notice of the denial, and at Recipient's request is subject to review by the Metro Executive Officer. The provisions of Sections 7, 8, 9, and 10 shall continue in effect after the completion by Recipient of any project(s) pursuant to this Agreement.

6. Situs

This Agreement is entered into within the state of Oregon, and the law of said state, whether substantive or procedural, shall apply to this Agreement, and all statutory, charter and ordinance provisions that are applicable to public contracts in the state of Oregon shall be followed with respect to this Agreement.

7. Limitations on Use

All property acquired by Recipient with Open Spaces funding by Metro shall be maintained for its intended natural resource dependent recreational, natural area or trail activities. Recipient commits to maintain all property acquired pursuant to this Agreement in a manner consistent with Metro's Greenspaces Master Plan. Recipient will not construct or allow the construction of improvements to the property which are inconsistent with the Master Plan. However, in the event of extraordinary unforeseen circumstances Recipient may after January 1, 2005, authorize a change in use of acquired property. In the event a change in use occurs, Recipient agrees to take the following actions:

- Recipient shall give Metro 180 days advance written notice of its intent to authorize a change in use or sell the property to a third party. Recipient shall obtain an appraisal of the fair market value of the property assuming that the property was not subject to any use restrictions. The appraisal is subject to approval by Metro as to its completeness and reasonableness. After the appraisal value is determined and is approved by Metro, Recipient shall obtain the fair market value of the discontinued property and apply it to completion of a substitute project(s) within 90 days after authorizing the change in use.
- Recipient shall determine through the process described in Section 4 of this Agreement what substitute project should be funded and completed.

8. Oregon Constitution and Tax Exempt Bond Covenants

Recipient acknowledges that Metro's source of funds for this Program is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d), and 11(e) of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes as exempt for Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event Recipient breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

9. Funding Declaration

Recipient will document on-site, for all acquisitions and capital improvements, and in any publication, media presentations or other presentations, that funding came from Metro. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects. Recipient agrees to provide maintenance for all signs. Metro may elect to furnish on-site signage for use by Recipient.

10. Indemnification

Recipient shall indemnify Metro and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in anyway connected to the wrongful acts of the Recipient's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

Metro shall indemnify Recipient and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

11. Termination for Cause

Metro may terminate this Agreement in full, or in part, at any time before the date of completion, whenever Metro determines, in its sole discretion, that Recipient has failed to comply with the conditions of this Agreement and is therefore in default. Metro shall promptly notify Recipient in writing of that determination and document such default as outlined hereinbelow. Notwithstanding any termination for cause, Recipient shall be entitled to receive payments for any work completed or for which Recipient is contractually obligated for which completion or contractual obligation occurred prior to the effective date of the termination, provided that Metro shall not be obligated to make any payment except for work specifically provided for in this Agreement.

12. Documentation of Default

Recipient shall be deemed to be in default if it fails to comply with any provisions of this Agreement.

Prior to termination under this provision, Metro shall provide Recipient with written notice of default and allow Recipient ninety (90) days within which to cure the default. In the event Recipient does not cure the default within ninety (90) days, Metro may terminate all or any part of this Agreement for cause. Recipient shall be notified in writing of the reasons for the termination and the effective date of the termination.

Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

If, after notice of termination, Metro agrees or a court finds that Recipient was not in default or that the default was excusable, such as a strike, fire, flood, or other event that is

not the fault of, or is beyond the control of Recipient, Metro will allow Recipient to continue work, or both parties may treat the termination as a joint termination for convenience whereby the rights of the Recipient shall be as outlined hereinbelow.

13. Joint Termination for Convenience

Metro and Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro subject to that mutual agreement.

Within thirty (30) days after termination pursuant to this provision, Recipient shall submit an itemized invoice(s) for all unreimbursed work within the Scope of Work of this Agreement completed before termination.

Metro shall not be liable for any costs invoiced later than thirty (30) days after termination unless the Recipient can to Metro's full satisfaction show good cause beyond the Recipient's control for the delay.

14. Documents are Public Property

All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property.

Nothing in this section or in any other part of this Agreement shall be construed as limiting a Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise

exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

15. Project Records

Comprehensive records and documentation relating to the Scope of Work and all specific tasks involved in the Project shall be maintained by Recipient.

Recipient shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement.

16. Audits, Inspections, and Retention of Records

Metro, and any of its representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of Recipient's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement.

All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the Project shall be retained by Metro and Recipient and all of its contractors for three years from the date of completion of the Project, or expiration of the Agreement, whichever is later, to facilitate any audits or inspection.

A final determination of the allowability of costs charged to the Project may be made on the basis of an audit or other review. Any funds paid to Recipient in excess of the amount to

which Recipient is finally determined to be entitled under the terms of this Agreement constitute a debt to Metro, and shall be returned by Recipient to Metro.

17. Law of Oregon

This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon.

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

Specifically, it is a condition of this Agreement that Recipient and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by Oregon Laws 1989, chapter 684.

18. Assignment

Recipient may not assign any of its responsibilities under this Agreement without prior written consent from Metro, except the Recipient may delegate or subcontract for performance of any of its responsibilities under this Agreement.

19. Severability

If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

20. Entire Agreement

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Recipient, by the signature below of its authorized representative, hereby acknowledges that Recipient has read this Agreement, understands it and agrees to be bound by its terms and conditions.

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

CITY/COUNTY OF _____

METRO

By: _____

By: _____

Title: _____

Mike Burton
Executive Officer

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1256a

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 95-2215, RELATING TO AUTHORIZING EXECUTION OF TWENTY-SIX INTERGOVERNMENTAL AGREEMENTS WITH LOCAL PARKS PROVIDERS FOR THE LOCAL SHARE OF THE OPEN SPACES PROGRAM BOND MEASURE 26-26

Date: September 15, 1995

Presented by:
Dan Cooper and Mel Huie

FACTUAL BACKGROUND AND ANALYSIS

Ballot Measure 26-26 provided for \$25 million for local share projects that were specifically identified in the ballot measure. The projects are to be administered by the 26 local parks providers that are identified in the Metro Greenspaces Master Plan. Prior to the election at which the bond measure was approved, Metro staff prepared an outline of the specific terms to be included in the intergovernmental agreements if the bond measure was successful. This information was transmitted to all local parks providers by Metro general counsel and the executive officer, and Councilor McLain. A copy of the letter outlining the significant terms to be included in the agreement is attached to this report.

After the adoption of the measure on May 16, 1995, three separate drafts of a form of intergovernmental agreement have been distributed to the local parks providers for their review and comment. The final version that is attached hereto represents the results of this effort.

Because of specific circumstances peculiar to each jurisdiction, not all of the jurisdictions will end up with identical language in their agreement with Metro. For instance, Washington County intends to use its local share to acquire properties that will be landbanked and later transferred to active park providers when the park providers are willing to accept responsibility for the property. Thus, Washington County's agreement will contain a provision that is unique to it that specifically reflects Metro's approval of subsequent transfers to other local government parks providers. The resolution would authorize the executive officer to deviate from the standard form which is attached where upon the recommendation of general counsel deviations have been requested by the local parks provider in order to reflect such specific local circumstances.

BUDGET IMPACT

The \$25 million local share allocation is consistent with the open spaces bond measure that has been passed and funds will be secured through the issuance of bonds.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 95-2215.

gl1245



METRO

COPY

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

April 24, 1995

Sent to all Parks Providers' Counsel
See Our File: 14.8.4.6

Scott Parker, Attorney
North Clackamas Parks and Recreation District
Courthouse Annex
906 Main Street
Oregon City, OR 97045-1819

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Dear Scott:

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April 24, 1995

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I anticipate that the first draft of an IGA containing these provisions will be available for distribution by the end of April.

Yours very truly,

/s/ DANIEL B. COOPER

Daniel B. Cooper
General Counsel

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1953

Attachments

Project: Open Spaces Program
Contract No.

INTERGOVERNMENTAL AGREEMENT
Open Spaces Bond Measure
Local Share Component

This Agreement dated this ____ day of _____ 1995, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the _____, located at _____, (hereinafter referred to as "Recipient"), and shall remain in full force and effect for the period September 1, 1995, to September 1, 1998, (unless extended as provided for herein).

W I T N E S S E T H:

WHEREAS, The electors of Metro approved a ballot measure on May 16, 1995, authorizing Metro to issue \$135.6 million in bonds for Open Spaces, Parks, Trails and Streams (the "Measure"); and

WHEREAS, The Measure provided that \$25 million from bond proceeds be expended by local parks providers for specified projects; and

WHEREAS, Recipient is a local parks provider who has received approval for funding for project(s) as specified in the Measure; and

WHEREAS, Metro and Recipient desire to enter into this Agreement to provide for funding of Recipient's project(s) subject to terms and conditions as provided for in the Measure;

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

1. Project Declaration

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2. Funding

Metro's contribution to the Project(s) is limited to \$ _____. Payment of funds by Metro to Recipient will be subject to the procedures set forth in Attachment "B" of this Agreement.

3. Funding Limitation

Metro through the approval of the Measure and the sale of bonds has established this Agreement with the sole purpose of implementing the Metro Open Spaces Program through funding of this Project. Therefore, Metro neither intends nor accepts any direct involvement in this Project which can or could be construed to result in supervisory responsibility during the course of acquisition or construction, and upon completion of the Project and payment of funds as provided for herein there will be no further obligations on the part of Metro.

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Metro has committed to pay from bond proceeds the amount specified for the approved project(s) described in Attachment "A." Recipient may substitute a different project only if the following conditions are met:

a. Recipient through its governing body must find that one or more of the projects described in Attachment "A" have become degraded, are cost prohibitive or are otherwise infeasible.

b. Recipient through its governing body shall conduct a public process and determine the substitute project consistent with the provisions of the Measure and the Local Share Guidelines.

c. The substitute project is subject to administrative approval by Metro's Regional Parks and Greenspaces Department Director, such approval shall not be unreasonably withheld. Metro will designate the name of the Department Director in writing at the time this Agreement is executed. Thereafter, Metro may give written notice to Recipient of any change in the Department Director.

d. Metro's financial obligation under this Agreement shall not be increased.

Recipient agrees to comply at all times with provisions of the Measure and the adopted Local Share Guidelines which appear as Attachment "C" to this Agreement and by this reference are made a part hereof.

5. Term

Metro's obligation to provide funds pursuant to this Agreement shall terminate September 1, 1998. It is the intent of the parties that Recipient will have completed the project(s) and all Metro funding obligated under this Agreement shall have been paid prior to such date. However, in the event of unforeseen circumstances that cause Recipient to be delayed in completing the project(s), Recipient is entitled upon giving 30 days written notice to Metro to extend Metro's obligations pursuant to this Agreement for an additional six

months. More than one extension may be granted if necessary to complete the project(s). Recipient must receive approval of the extension from Metro's Regional Parks and Greenspaces Department Director. Metro may deny an extension if it finds that Recipient is not making good faith efforts to complete the project(s) and that the need for an extension is due to Recipient's neglect of the project(s). Any denial of an extension is not effective for 10 days after receipt of notice of the denial, and at Recipient's request is subject to review by the Metro Executive Officer. The provisions of Sections 7, 8, 9, and 10 shall continue in effect after the completion by Recipient of any project(s) pursuant to this Agreement.

6. Situs

This Agreement is entered into within the state of Oregon, and the law of said state, whether substantive or procedural, shall apply to this Agreement, and all statutory, charter and ordinance provisions that are applicable to public contracts in the state of Oregon shall be followed with respect to this Agreement.

7. Limitations on Use

All property acquired by Recipient with Open Spaces funding by Metro shall be maintained for its intended natural resource dependent recreational, natural area or trail activities. Recipient commits to maintain all property acquired pursuant to this Agreement in a manner consistent with Metro's Greenspaces Master Plan. Recipient will not construct or allow the construction of improvements to the property which are inconsistent with the Master Plan. However, in the event of extraordinary unforeseen circumstances Recipient may after January 1, 2005, authorize a change in use of acquired property. In the event a change in use occurs, Recipient agrees to take the following actions:

- Recipient shall give Metro 180 days advance written notice of its intent to authorize a change in use or sell the property to a third party. Recipient shall obtain an appraisal of the fair market value of the property assuming that the property was not subject to any use restrictions. The appraisal is subject to approval by Metro as to its completeness and reasonableness. After the appraisal value is determined and is approved by Metro, Recipient shall obtain the fair market value of the discontinued property and apply it to completion of a substitute project(s) within 90 days after authorizing the change in use.
- Recipient shall determine through the process described in Section 4 of this Agreement what substitute project should be funded and completed.

8. Oregon Constitution and Tax Exempt Bond Covenants

Recipient acknowledges that Metro's source of funds for this Program is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d), and 11(e) of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes as exempt for Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event Recipient breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

9. Funding Declaration

Recipient will document on-site, for all acquisitions and capital improvements, and in any publication, media presentations or other presentations, that funding came from Metro. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects. Recipient agrees to provide maintenance for all signs. Metro may elect to furnish on-site signage for use by Recipient.

10. Indemnification

Recipient shall indemnify Metro and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in anyway connected to the wrongful acts of the Recipient's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

Metro shall indemnify Recipient and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

11. Termination for Cause

Metro may terminate this Agreement in full, or in part, at any time before the date of completion, whenever Metro determines, in its sole discretion, that Recipient has failed to comply with the conditions of this Agreement and is therefore in default. Metro shall promptly notify Recipient in writing of that determination and document such default as outlined hereinbelow. Notwithstanding any termination for cause, Recipient shall be entitled to receive payments for any work completed or for which Recipient is contractually obligated for which completion or contractual obligation occurred prior to the effective date of the termination, provided that Metro shall not be obligated to make any payment except for work specifically provided for in this Agreement.

12. Documentation of Default

Recipient shall be deemed to be in default if it fails to comply with any provisions of this Agreement.

Prior to termination under this provision, Metro shall provide Recipient with written notice of default and allow Recipient ninety (90) days within which to cure the default. In the event Recipient does not cure the default within ninety (90) days, Metro may terminate all or any part of this Agreement for cause. Recipient shall be notified in writing of the reasons for the termination and the effective date of the termination.

Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

If, after notice of termination, Metro agrees or a court finds that Recipient was not in default or that the default was excusable, such as a strike, fire, flood, or other event that is

not the fault of, or is beyond the control of Recipient, Metro will allow Recipient to continue work, or both parties may treat the termination as a joint termination for convenience whereby the rights of the Recipient shall be as outlined hereinbelow.

13. Joint Termination for Convenience

Metro and Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro subject to that mutual agreement.

Within thirty (30) days after termination pursuant to this provision, Recipient shall submit an itemized invoice(s) for all unreimbursed work within the Scope of Work of this Agreement completed before termination.

Metro shall not be liable for any costs invoiced later than thirty (30) days after termination unless the Recipient can to Metro's full satisfaction show good cause beyond the Recipient's control for the delay.

14. Documents are Public Property

All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property.

Nothing in this section or in any other part of this Agreement shall be construed as limiting a Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise

exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

15. Project Records

Comprehensive records and documentation relating to the Scope of Work and all specific tasks involved in the Project shall be maintained by Recipient.

Recipient shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement.

16. Audits, Inspections, and Retention of Records

Metro, and any of its representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of Recipient's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement.

All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the Project shall be retained by Metro and Recipient and all of its contractors for three years from the date of completion of the Project, or expiration of the Agreement, whichever is later, to facilitate any audits or inspection.

A final determination of the allowability of costs charged to the Project may be made on the basis of an audit or other review. Any funds paid to Recipient in excess of the amount to

which Recipient is finally determined to be entitled under the terms of this Agreement constitute a debt to Metro, and shall be returned by Recipient to Metro.

17. Law of Oregon

This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon.

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

Specifically, it is a condition of this Agreement that Recipient and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by Oregon Laws 1989, chapter 684.

18. Assignment

Recipient may not assign any of its responsibilities under this Agreement without prior written consent from Metro, except the Recipient may delegate or subcontract for performance of any of its responsibilities under this Agreement.

19. Severability

If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

20. Entire Agreement

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Recipient, by the signature below of its authorized representative, hereby acknowledges that Recipient has read this Agreement, understands it and agrees to be bound by its terms and conditions.

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

CITY/COUNTY OF _____

METRO

By: _____

By: _____

Title: _____

Mike Burton
Executive Officer

gl
1256a

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 95-2215, RELATING TO AUTHORIZING EXECUTION OF TWENTY-SIX INTERGOVERNMENTAL AGREEMENTS WITH LOCAL PARKS PROVIDERS FOR THE LOCAL SHARE OF THE OPEN SPACES PROGRAM BOND MEASURE 26-26

Date: September 15, 1995

Presented by:
Dan Cooper and Mel Huie

FACTUAL BACKGROUND AND ANALYSIS

Ballot Measure 26-26 provided for \$25 million for local share projects that were specifically identified in the ballot measure. The projects are to be administered by the 26 local parks providers that are identified in the Metro Greenspaces Master Plan. Prior to the election at which the bond measure was approved, Metro staff prepared an outline of the specific terms to be included in the intergovernmental agreements if the bond measure was successful. This information was transmitted to all local parks providers by Metro general counsel and the executive officer, and Councilor McLain. A copy of the letter outlining the significant terms to be included in the agreement is attached to this report.

After the adoption of the measure on May 16, 1995, three separate drafts of a form of intergovernmental agreement have been distributed to the local parks providers for their review and comment. The final version that is attached hereto represents the results of this effort.

Because of specific circumstances peculiar to each jurisdiction, not all of the jurisdictions will end up with identical language in their agreement with Metro. For instance, Washington County intends to use its local share to acquire properties that will be landbanked and later transferred to active park providers when the park providers are willing to accept responsibility for the property. Thus, Washington County's agreement will contain a provision that is unique to it that specifically reflects Metro's approval of subsequent transfers to other local government parks providers. The resolution would authorize the executive officer to deviate from the standard form which is attached where upon the recommendation of general counsel deviations have been requested by the local parks provider in order to reflect such specific local circumstances.

BUDGET IMPACT

The \$25 million local share allocation is consistent with the open spaces bond measure that has been passed and funds will be secured through the issuance of bonds.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 95-2215.

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