

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN) RESOLUTION NO. 98-2688
INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF PORTLAND FOR) Introduced by Mike Burton
MANAGEMENT OF THE TERWILLIGER-) Executive Officer
MARQUAM WOODS 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, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, an 18.8-acre Terwilliger-Marquam Woods property (hereafter "the Property") in the Terwilliger-Marquam Natural Area was identified as one of the regional "option sites" in the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) Fact Sheet 4 produced by Metro and authorized by the Metro Council via Resolution 95-2113; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on January 8, 1996, the Metro Council authorized via resolution 96-2265 purchase of the Property (Marquam Woods); and

WHEREAS, in June 1996, Metro contributed 90% and the City of Portland contributed 10% and acquired the Property and share ownership consistent with their contributions; and

WHEREAS, the City of Portland and Metro desire that the City of Portland should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City of Portland would benefit the Property, as well as the public in general by providing increased care for the Property and by encouraging public use; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for the City of Portland, requiring that the Property be managed for passive recreation, pedestrian use, and habitat restoration, with the primary goal being to enable access; now therefore,

BE IT RESOLVED,

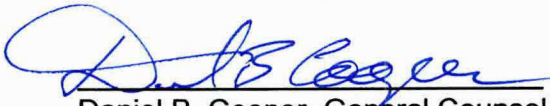
That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Portland, attached hereto as Exhibit A, wherein the City of Portland will manage the Property.

ADOPTED by the Metro Council this 1ST day of OCTOBER, 1998.



Jon Kvistad, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT

Marquam Woods - Terwilliger Property

This Agreement dated this ___ day of _____, 1996, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736, and the City of Portland, located at 1220 S.W. Fifth Avenue, Portland, Oregon 97204 ("the City").

WITNESSETH:

WHEREAS, The Trust for Public Land is or will be the owner of approximately 18.8 acres of real property known as the Marquam Woods / Maletis property ("the Property"), located between S.W. Terwilliger and S.W. Barbur Boulevards and S.W. Hamilton Street, in Portland, Oregon and more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, the Terwilliger-Marquam Natural Area was identified as a regionally significant open space in the Metro Greenspaces Master Plan, and the Property has been identified as an important site within the Terwilliger-Marquam Natural Area;

WHEREAS, the Property was identified as one of the regional "option sites" in the Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("the Open Spaces Measure"), Fact Sheet 4 produced by Metro;

WHEREAS, The Trust for Public Land wishes to sell the Property for ONE MILLION FOUR HUNDRED THOUSAND Dollars (\$1,400,000);

WHEREAS, Metro and the City wish to acquire the Property to preserve it as open space in accordance with the Open Spaces Measure and with Metro and the City's Open Spaces Program Intergovernmental Agreement;

WHEREAS, on June 5, 1996 the City authorized a City contribution of ten percent (10%) of the purchase price using a portion of the City's local share of the Open Spaces Measure bond proceeds, and on May 16, 1996 the Metro Council authorized Metro to purchase the Property, together with the City's 10% contribution, using Open Spaces Measure bond proceeds; and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, and operation of the Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. The Parties agree that Metro will enter into an Agreement for Sale of Real Property with The Trust for Public Land to purchase the Property for ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000), with a closing date of June 14, 1996.
2. Metro shall contribute ONE MILLION TWO HUNDRED SIXTY THOUSAND (\$1,260,000) towards the purchase price for the Property, payable in cash at the close of escrow, and the City shall contribute ONE HUNDRED FORTY THOUSAND (\$140,000) towards the purchase price for the Property, payable in cash at the close of escrow.
3. The Parties will take title to the Property as tenants in common, Metro having a nine-tenths (9/10) undivided interest and the City having a one-tenth (1/10th) undivided interest. The deed for the Property shall be subject to all the provisions of this Agreement.
4. In the event the Property is ever sold, acquired by eminent domain, or otherwise liquidated, the City shall be entitled to ten percent (10%) of the proceeds from such sale, condemnation or liquidation and Metro shall be entitled to ninety percent (90%). If the Property is ever sold, acquired by eminent domain or otherwise liquidated, the Parties shall obtain an appraisal of the fair market value of the Property, and shall use this fair market value to purchase another piece of property for use as public open space.

B. Management, Maintenance, and Operation

1. The City shall be responsible for the ongoing management, maintenance, and operation of the Property.
2. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property.
3. The term of the City's management, maintenance, and operation responsibilities for the Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

C. Limitations on Use

1. The Property shall be managed, maintained and operated in accordance with its intended use as a natural area open space, with the primary goal being protection of the Property's natural resources.
2. The Property shall be managed, maintained and operated in accordance and in a manner consistent with Metro's Greenspaces Master Plan, the City's Comprehensive Plan, the City's

Terwilliger Parkway Corridor Plan, the City's Terwilliger Parkway Design Guidelines, and with the City's Southwest Hills Resource Protection Plan ("the Plans").

3. The Property may be used for passive pedestrian activity and nonmotorized bicycle use only. The City shall be responsible for granting permits for use of the Property in accordance with the Plans and with the other terms and limitations of this Agreement. Metro shall have the right to approve of any improvements or trails on the Property, and the City shall give Metro 180 days advance written notice of its intent to construct any improvements or trails on the Property. In any event, no improvements shall be constructed on the Property that are inconsistent with the Plans.
4. Metro shall have the right to approve any changes in the Plans relating to the management, maintenance, or operation of the Property. The City shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend the City's Plans where such amendment would alter the City's management, maintenance or operation of the Property.
5. The City shall be fully responsible for obtaining any permits necessary for management, maintenance or operation of the Property. The City accepts any assessment responsibilities for the Property.
6. The Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements as approved in advance by Metro in accordance with paragraph C3 above.

D. General Provisions

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, 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 arising from the management, maintenance or operation of the Property, including from construction of trails or other allowed improvements on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or

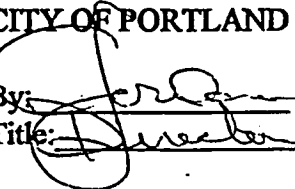
the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

3. Funding Declaration. Metro and the City will document on-site and in any publication, media presentation or other presentations, that funding for the acquisition came from Open Spaces Measure bond proceeds, with regional and local share contributions by Metro and the City. 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.
4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public 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 acquisition, management, maintenance or operation of the Property shall become public property. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
7. Assignment. The City may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except the City may delegate or subcontract for performance of any of its responsibilities under this Agreement.
8. 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.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF PORTLAND

By: 
Title: Director

METRO

By: _____
Title: _____

APPROVED AS TO FORM


CITY ATTORNEY

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2688 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR MANAGEMENT OF THE TERWILLIGER-MARQUAM WOODS PROPERTY

Date: August 25, 1998

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2688 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Portland for management of a property the Terwilliger-Marquam Woods property.

Background and Analysis

In January 1996, Metro Council authorized via Resolution 96-2265 the purchase of an 18.8-acre property along the Terwilliger Parkway in the vicinity of Marquam Woods ("the Property"). In June 1996, Metro purchased the Property from The Trust for Public Land. The property was part of the Options Demonstration Project approved by Resolution 93-1832 and identified in the Open Spaces, Parks and Streams bond measure (26-26) Fact Sheet #4 as an option property. Metro contributed 90% and the City of Portland contributed 10% of the purchase price, and the two agencies share title consistent with their contributions.

The property is part of the Terwilliger Parkway and 40-Mile Loop Trail, with 2,000 feet of frontage along the Terwilliger bike and pedestrian path. The site is steeply sloped and completely forested with coniferous and deciduous trees and several small streams traversing it. It is an important scenic and recreational resource.

The City of Portland is committed to assuming management responsibilities for the Property. The IGA enumerates these responsibilities. In order to effectively transfer management responsibilities arising from the Property, the Metro Council is requested to authorize the Executive Officer to execute the IGA.

Findings

Authorization of the Executive Officer's execution of the IGA with the City of Portland is recommended based on the following:

- The Property was identified as a regionally significant open space in the Greenspaces Master Plan and approved for purchase by the Metro Council via Resolution 96-2265.
- Metro and the City of Portland share ownership of the Property consistent with their contributions to the purchase price (90% Metro and 10% City of Portland).

- The staff report for Resolution 96-2265 identified the City of Portland's interest in managing the property and indicated that the IGA would be submitted at a later date to the Metro Council for approval.
- The Open Spaces, Parks and Streams bond measure encourages cooperative arrangements with other park providers, and does not provide any funds for operating expenses of open space property.
- The proximity of the Property to other City of Portland open space in the Terwilliger area makes management of the site more efficient, and therefore appropriate, for the City of Portland, rather than Metro.
- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to the protection of regionally significant open spaces.

Budget Impact

The City of Portland would become responsible for the management, maintenance and operation of the Property. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2688.