

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE )  
EXECUTIVE OFFICER TO EXECUTE AN )  
INTERGOVERNMENTAL AGREEMENT )  
WITH THE OREGON PARKS AND )  
RECREATION DEPARTMENT FOR )  
MANAGEMENT OF PROPERTY IN THE )  
SANDY RIVER GORGE TARGET AREA )

RESOLUTION NO. 98-2658

Introduced by Mike Burton  
Executive Officer

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, 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 July 11, 1996 via resolution 96-2357, the Metro Council adopted a refinement plan for the Sandy River Gorge regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along the Sandy River and its tributaries; and

WHEREAS, in April 1998, Metro acquired 4.7 acres on the Sandy River (the "Property"), adjacent to Dabney State Park and in the Sandy River Gorge target area; and

WHEREAS, the Oregon Parks and Recreation Department (OPRD) and Metro desire that OPRD should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and OPRD 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 OPRD, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; pedestrian and bicycle use; and public recreation consistent with these goals; with the primary goal being to manage the Property as part of Dabney State Park; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with OPRD, attached hereto as Exhibit A, wherein OPRD will manage the Property in the Sandy River Gorge Target Area.

ADOPTED by the Metro Council this 18<sup>th</sup> day of JUNE, 1998.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**INTERGOVERNMENTAL AGREEMENT****Russ Property**

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 1998, 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 ("Metro"), and the Oregon Parks and Recreation Department ("OPRD"), located at 1115 Commercial Street, NE, Salem, Oregon 97310-1001.

**WITNESSETH:**

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure"); and

WHEREAS, OPRD is a parks provider which owns and manages Dabney State Park on the Sandy; and

WHEREAS, pursuant to the Metro Open Spaces Bond Measure, Metro purchased certain property on the Sandy River in unincorporated Multnomah County, with Open Spaces Bond Measure proceeds, as follows:

- Approximately 4.7 acres of real property known as the Russ property, at 31100 E Crown Point Highway, Troutdale, as more particularly described in Exhibit A attached hereto [legal description] ("The Property"); and

WHEREAS, the Sandy River watershed was identified as a regionally significant area in the Metro Greenspaces Master Plan, and the Property is within the Sandy River Gorge Target Area established pursuant to the Metro Open Spaces Bond Measure;

WHEREAS, Metro purchased the Property with proceeds from the Metro Open Spaces Bond Measure to preserve it as open space in accordance with the measure;

WHEREAS, Metro and OPRD wish to preserve the Property as an open space in accordance with the Metro Open Spaces Bond Measure and with the Metro Greenspaces Master Plan;

WHEREAS, in a letter dated October 6, 1997, State Parks and Recreation Director Robert Meinen indicated that OPRD was willing to assume management, operation and maintenance responsibilities arising from the Property;

WHEREAS, on \_\_\_\_\_, 1998, the Metro Council authorized Metro to enter into this Agreement to provide funding for the acquisition of and transfer of management responsibility for the Property in accordance with the terms set forth in this Agreement, and

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

Now, therefore, the parties agree as follows:

**A. Acquisition**

1. On March 20, 1998, Metro purchased the Property in fee simple ownership with Metro Open Spaces Bond Measure proceeds.
2. Metro shall take full fee title to the Property.

**B. Management, Maintenance, and Operation**

1. OPRD shall be responsible for the ongoing management, maintenance, and operation of the Property in accordance with the terms of this Agreement.
2. The Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the management plan for Dabney State Park. These Plans shall constitute the Resource Protection Plans for the Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
3. If Metro executes an agreement to purchase additional property within the Sandy River Gorge Target Area and adjacent to Dabney State Park which Metro would like OPRD to manage under the terms of this Agreement, Metro shall notify OPRD in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). OPRD shall notify Metro if OPRD does not wish to accept management responsibilities for that property in accordance with this Agreement, using OPRD's best efforts to make this notification prior to the closing date for the acquisition. If OPRD has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then OPRD shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.
4. Metro grants to OPRD, 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.

5. The term of OPRD'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 natural area open space, with the primary goal being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
2. The Property may be used by the public, in OPRD's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Property, and OPRD shall give Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or with the Plans.
3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Property. Any changes in the Plans made or proposed by OPRD that relate to management, maintenance, or operation of the Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. OPRD 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 OPRD's Plans where such amendment would alter OPRD's management, maintenance or operation of the Property.
4. 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, for the purpose of improving resource values, or as necessary to protect public safety.
5. OPRD shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as OPRD may deem necessary to increase safety on the Property, and to preserve and protect the Property's natural resources.

**D. Permits, Assessments, Coordination with Other Public Agencies**

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property OPRD agrees to be responsible for funding the operation and maintenance of the Property with OPRD's own resources. OPRD's management responsibility shall include responsibility for all taxes or assessments for the Property.

2. OPRD shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by OPRD to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. OPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the Property.

**E. General Provisions**

1. Indemnification. OPRD, 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 the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of the 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. OPRD 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 OPRD 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. Signage. OPRD may provide on-site signage informing the public that OPRD is managing the site. Metro will provide on-site signage which shall be installed by OPRD stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. OPRD shall also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. All signage will be consistent with Metro guidelines for Open Spaces Projects..
4. Joint Termination for Convenience. Metro and OPRD 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 the mutual written agreement of the parties.

5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
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. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro:                      Metro  
    Charles Ciecko  
    Director, Metro Regional Parks and Greenspaces  
    600 N.E. Grand Avenue  
    Portland, OR 97232-2736

To State:                        Oregon Parks and Recreation Department  
    Robert Meinen, Director  
    1115 Commercial Street, NE  
    Salem, Oregon 97310-1001

8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
9. 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.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the 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.

Oregon Parks and Recreation Department

METRO

By: \_\_\_\_\_  
Title: Director, Oregon Parks and Recreation.  
Department

By: \_\_\_\_\_  
Title: Executive Officer



EXHIBIT "A"

That certain tract of land lying in the Northeast one-quarter of the Northwest one-quarter of Section 5, Township 1 South, Range 4 East, of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at an iron pipe driven in the West line of said Northeast one-quarter of Northwest one-quarter of said Section 5, Township 1 South, Range 4 East and South  $0^{\circ}13'15''$  East 985.7 feet from the Northwest corner of said Northeast one-quarter of the Northwest one-quarter; thence South  $89^{\circ}12'$  East 600 feet on a line parallel with the North line of said Section 5 to a point and place of beginning of tract of land to be described; thence South  $89^{\circ}12'$  East 194.93 feet to the center of Columbia River Highway; thence Easterly tracing the center line of said highway 520.0 feet, more or less; to the East line of said Northeast one-quarter of the Northwest one-quarter; thence South 351.3 feet to a 1- $\frac{1}{2}$  inch iron pipe driven at the Southeast corner of said Northeast one-quarter of the Northwest one-quarter; thence North  $89^{\circ}12'$  West 714 feet tracing the South line of said Northeast one-quarter of the Northwest one-quarter to a point; thence North  $0^{\circ}48'$  East 334.3 feet, more or less, to the point of beginning.

**EXHIBIT B****Notice of Acquisition**

\_\_\_\_\_, 199\_\_

Oregon Parks and Recreation Department  
Robert Meinen, Director  
1115 Commercial Street, NE  
Salem, Oregon 97310-1001

Re: Acquisition of Property along [target area]

Dear Director:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro \_\_\_\_\_ dated \_\_\_\_\_, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the County of Multnomah and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that OPRD manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if OPRD does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if OPRD does not so notify Metro within thirty (30) days of receipt of this letter, OPRD shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager  
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

## **Staff Report**

### **CONSIDERATION OF RESOLUTION NO. 98-2658 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT FOR MANAGEMENT OF PROPERTY IN THE SANDY RIVER GORGE TARGET AREA**

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**Date: May 11, 1998**

**Presented By: Charles Ciecko  
Jim Desmond**

#### **Proposed Action**

Resolution No. 98-2658 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the Oregon Parks and Recreation Department (OPRD) for management of a property in the Sandy River Gorge Target Area.

#### **Background and Analysis**

In April 1998, Metro purchased from Roger and Beverly Russ a 4.7-acre property in the Sandy River Gorge Target Area ("the Property"). The Property is adjacent to Dabney State Park, which is owned by the State of Oregon and managed by OPRD. Metro's acquisition of the Property closed the only gap in public ownership along a stretch of the east bank of the Sandy River extending nearly 1.5 miles.

OPRD 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 OPRD is recommended based on the following:

- The Sandy River Gorge Target Area Refinement Plan includes an objective for properties classified as Tier 1A which encourages the acquisition of riparian land between Dodge Park and the Stark Street Bridge, in order to conserve the wildlife habitat and water quality that is so rich in this area. Adjacent to Dabney State Park and on the Sandy River, the Property expands the deer and elk habitat already protected in Dabney State Park.
- The Sandy River Gorge Target Area objectives also encourage partnerships involving Metro and OPRD which serve to expand recreational opportunities at existing facilities such as Dabney State Park.
- The proximity of the Property to Dabney State Park makes management of the site more efficient, and therefore appropriate, for OPRD, rather than a 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 riparian properties on the Sandy River.

### **Budget Impact**

OPRD would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. This would reduce Metro's landbanking costs and future operation and maintenance expenses.

### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 98-2658.