

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF PORTLAND FOR THE)
MANAGEMENT OF PROPERTY IN THE EAST)
BUTTES/BORING LAVA DOMES TARGET AREA)

RESOLUTION NO. 98-2660

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 25, 1996 via resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes 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; and

WHEREAS, in April 1998, Metro and the City of Portland (the "City") acquired 1.5 acres in the East Buttes/Boring Lava Domes target area between Johnson Creek and the Springwater Corridor Trail (the "Property"); and

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


WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City would benefit the Property, as well as the public in general by providing enhanced public access to the Springwater Corridor Trail; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for the City, 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 a trailhead for the Springwater Corridor Trail; 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 will manage the Property in the East Buttes/Boring Lava Domes target area.

ADOPTED by the Metro Council this 18th day of June, 1998.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT**Garrison 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 City of Portland, located at 1120 S.W. Fifth Avenue, Portland, Oregon 97204 ("the City").

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");

WHEREAS, the City is a local parks provider which has received Metro Open Spaces Bond Measure local share funding for this project through an intergovernmental agreement between Metro and the City entered into on October 24, 1995 ("Local Share IGA");

WHEREAS, The East Buttes/Boring Lava Domes Target Area, which was identified as a regionally significant natural area by the Metropolitan Greenspaces Master Plan, the Open Spaces Bond Measure, and the Refinement Plan for the East Buttes/Boring Lava Domes Target Area adopted by the Metro Council on July 17, 1996, identifies certain areas as Tier IB;

WHEREAS, the Garrison Property is located along the Springwater Corridor, between Powell and Jenne Buttes, and is identified as a Tier IB property in the Refinement Plan;

WHEREAS, pursuant to the Metro Open Spaces Bond Measure and the East Buttes/Boring Lava Domes Target Area Refinement Plan, Metro and the City purchased the Garrison Property with Open Spaces Bond Measure proceeds on March 30, 1998, which property may be more particularly described as follows:

- Approximately 1.5 acres of real property, located at 5006 SE 174th Avenue, Portland, Oregon 97236, as more particularly described in Exhibit A attached hereto ("the Property");

WHEREAS, Metro and the City acquired fee simple title to the Garrison property as tenants in common, with the City owning an undivided 75% interest subject to deed restrictions requiring that the property remain in its natural state in perpetuity, and Metro owning an undivided 25% interest, in accordance with the requirements of the East Buttes/Boring Lava Domes Tier IB Refinement Plan;

WHEREAS, Metro and the City wish to preserve the Garrison Property in accordance with the Metro Open Spaces Bond Measure, the East Buttes/Boring Lava Domes Tier 1B Refinement Plan, and with the Metro Greenspaces Master Plan;

WHEREAS, the City wishes to manage the Garrison Property as a trailhead for the Springwater Corridor Trail;

WHEREAS, the Springwater Corridor Trail was identified as a regionally significant trail in the Metropolitan Greenspaces Master Plan;

WHEREAS, on March 25, 1998, via ordinance 172087 the City Council authorized the City to enter into this Agreement and to purchase, manage, operate and maintain the Property in accordance with the terms set forth in this Agreement;

WHEREAS, on _____, 1998, the Metro Council authorized Metro to enter into this Agreement to provide for the transfer of management responsibility for the Property in accordance with the terms set forth in this Agreement, 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, maintenance and operation of this Property;

Now, therefore, the parties agree as follows:

A. Management, Maintenance, and Operation

1. The City shall be responsible for the stabilization and ongoing management, maintenance, and operation of the Property in accordance with the terms of this Agreement.
2. All permanent structures currently on the property are to be demolished and removed by the City within one year of the date of this Agreement. The City shall pay 75% of the cost of demolition. Metro shall pay the remaining 25% of the cost of demolition.
3. 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 the Springwater Corridor Trail (collectively, "the Plans"). 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.
4. If Metro executes an agreement to purchase additional property within the East Buttes Target Area on the Springwater Corridor Trail which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement,

using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City 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.

5. 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.
6. 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.

B. 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 the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Allowable public uses include all uses associated with the Property's function as a trailhead. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Property, and the City 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 the City 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. The City shall give Metro written notice as soon as possible, but in any event no fewer 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.
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. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to preserve and protect the Property' natural resources.

C. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the stabilization, operation and maintenance of the Property with the City's own resources. Metro's sole contribution to the stabilization, operation and maintenance of the Property shall be 25% of the cost of demolishing the existing residence. The City's management responsibility shall include responsibility for all taxes or assessments for the Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. The City 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.

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 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. 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 and Signage. The City shall provide on-site signage informing the public that the City is managing the Property. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The City shall also document in any publication, media presentation or other presentations, that funding for acquisition of the Property came from Metro Open Spaces Bond Measure proceeds. On-site signage shall be subject to prior review and approval by Metro. All signage shall be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City 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

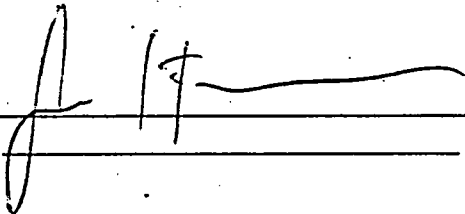
To City: City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1120 S.W. Fifth Ave. #1320
Portland, OR 97204

- 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.

CITY OF PORTLAND

METRO

By: 
Title: _____

By: _____
Title: _____

Exhibit A

LEGAL DESCRIPTION

Beginning at an iron pipe on the North line of the grantors land, said pipe being North 89° 30' East 384.2 feet from the Northeast corner of the Jenne D.L.C. in Section 18, Township 1, South, Range 3 East of the Willamette Meridian; thence from said point South 89° 30' West 253.1 feet to the center line of a County Road; thence following the center line of said County Road in a Southwesterly direction 180 feet more or less to the Easterly line of the Jenne D.L.C.; thence Southerly along said D.L.C. line being also the center line of the County Road to the Northerly right-of-way line of a one hundred foot right-of-way belonging to the P.R. L. & P. Co., thence along said right-of-way line Northeasterly 385 feet more or less to the Westerly line of a 10 acre tract conveyed to Peter Bryne and recorded in Book 298 of Deeds at page 80, Records of Multnomah County, Oregon; thence along said line North 0° 08' East 200 feet, more or less to the beginning, containing two acres, more or less, being in the County of Multnomah and State of Oregon.

EXHIBIT BNotice of Acquisition

_____, 199__

Mr. Jim Sjulín
Natural Resources Supervisor
City of Portland
Parks and Recreation Department
1120 SW Fifth Avenue, Rm. 1302
Portland, OR 97204

Re: Acquisition of Property along Springwater Corridor Trail

Dear Jim:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and City of Portland, dated _____, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property in the East Buttes/Boring Lava Domes Target Area:

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

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City 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. 98-2660 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR THE MANAGEMENT OF PROPERTY IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA

Date: May 19, 1998

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2660 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Portland ("the City") for management of a property in the East Buttes-Boring Lava Domes Target Area.

Background and Analysis

In March 1998, Metro and the City purchased from Anna Garrison a 1.5-acre property in the East Buttes/Boring Lava Domes Target Area ("the Property"). The Property is between the City-managed Springwater Corridor Trail and Johnson Creek. The joint acquisition of the Property by Metro and the City will allow the City to enhance public access on the Springwater Corridor Trail, at a location on the trail where such access is currently limited.

Metro negotiated the terms of the sale and contributed 25% of the acquisition price, while the City provided the balance of the purchase price and will assume management responsibilities. Metro and the City share title to the Property as tenants in common consistent with their contributions.

Findings

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

- The Springwater Corridor Trail, extending from Milwaukie to East Gresham, lacks sufficient access points where the public can park, unload bikes, and enter onto the trail. The Property, located on SE 174th between Foster Road and Powell Boulevard, addresses this deficiency in an area with a growing population. The IGA will allow the City to move forward with plans to develop this public access point.
- East Buttes/Boring Lava Domes Target Area Refinement Plan objectives establish a challenge grant program for properties identified as Tier IB priorities for acquisition. The Property is a Tier IB property acquired through the cooperative efforts of Metro and the City according to the guidelines of the challenge grant program. The IGA establishes management guidelines for Metro and the City, the Property's co-owners.

- The location of the Property on the Springwater Corridor Trail makes the City the appropriate manager of the site.
- 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 objectives established in the East Buttes/Boring Lava Domes Target Area

Budget Impact

The City 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 land-banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2660.