

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Approving a)
Memorandum of Understanding)
Between Multnomah County)
and Metro Regarding the)
Transfer of Regional Parks,)
Natural Areas, Golf Courses,)
Cemeteries and the Expo Center)

RESOLUTION
93 - 345

WHEREAS, the Board of County Commissioners adopted a resolution in October of 1991 supporting the regionalization of certain County services and inviting Metro to enter into discussions on the feasibility of such action; and

WHEREAS, subsequent to these discussions, the Board of County Commissioners adopted a resolution in April of 1992 endorsing the transfer of the County's parks and Expo Center to Metro and directing the Director of the Department of Environmental Services to begin negotiations with Metro to effect such as transfer; and

WHEREAS, the appointed negotiating teams for Multnomah County and Metro have successfully developed a Memorandum of Understanding (MOU) that sets forth the principles for a two-phased transfer agreement of the County's current parks system, less the neighborhood parks, and the Expo Center to Metro; and

WHEREAS, this transfer proposal has received considerable public review and comment, including the Dept. of Environmental Services Citizen Budget Advisory Committee, the Multnomah County Citizen Involvement Committee, the 1992 Multnomah County Citizen's Convention, the Multnomah County Fair Advisory Task Force, the Metro Policy Advisory Committee, and others; and

WHEREAS, it is understood that this MOU does not constitute a binding intergovernmental agreement, but it intended as an expression of intent, and to form the basis for an eventual intergovernmental agreement between Multnomah County and Metro; and

WHEREAS, the Governmental Affairs Committee of the Metro Council approved Resolution No. 93-1849 on September 16, 1993, which recommends approval of the MOU by the full Metro Council and authorizes staff to draft an intergovernmental agreement for the purpose of implementing the principles set forth in the MOU.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COMMISSIONERS AS FOLLOWS:

That the Board of Commissioners **approves** the attached **Memorandum of Understanding**, and authorizes staff to draft an intergovernmental agreement for the purpose of implementing the principles set forth in the Memorandum of Understanding.

ADOPTED this 14th day of October, 1993.



MULTNOMAH COUNTY, OREGON

By *Beverly Stein*
Beverly Stein
Multnomah County Chair

REVIEWED:
LAURENCE KRESSEL, COUNTY COUNSEL
for Multnomah County, Oregon

By *John L. DuBay*
John L. DuBay
Chief Deputy Counsel

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding

Regarding Transfer of Regional Parks,

Natural Areas, Golf Courses, Cemeteries,

and Trade/Spectator Facilities

Presently Owned and Operated by Multnomah County and Metro.

The purpose of this Memorandum of Understanding is to provide for a two-phase consolidation of operation, management, and ownership of all park facilities, natural areas, and trade/spectator facilities presently owned and operated by Multnomah County, including but not limited to Glendoveer Golf Course, Pioneer Cemeteries, and the Portland Exposition Center (EXPO), into the mix of natural spaces and trade/spectator facilities currently owned or operated by Metro. The first phase of consolidation is expected to be of limited duration pending full consolidation, including transfer of ownership of the County facilities to Metro, with the exception of any neighborhood parks. The first phase of consolidation is a management and operation agreement for all County facilities managed and operated within the current Multnomah County Recreation Fund. It is understood between County and Metro that the second phase of consolidation, including transfer of ownership, is of critical importance, and that phase one consolidation of operation and management is merely intended to promote a smooth and harmonious transfer of those County facilities to Metro that are of "metropolitan concern."

This Memorandum of Understanding sets forth the principles on which a two-phased consolidation agreement will be forwarded to the governing bodies of Multnomah County and Metro. The intent of this Memorandum of Understanding is to express the understanding of the terms and conditions that will be formalized as soon as possible and presented to the Metro Council and the County Commission for ratification. By ratifying this Memorandum of Understanding the Metro Council and Executive Officer and the Multnomah County Commission express their intent to approve a consolidation agreement. It is expressly agreed, however, that this Memorandum of Understanding does not constitute a binding intergovernmental agreement in and of itself, but is intended to form the basis for an eventual intergovernmental agreement between Metro and the County. This Memorandum of Understanding is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and COUNTY. This Memorandum of Understanding shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever.

I. PHASE I CONSOLIDATION

A. Transfer of Operation and Management

On January 1, 1994, COUNTY shall transfer all operational and management rights and responsibilities for the following programs, activities, properties and/or facilities currently budgeted in the Multnomah County Recreation Fund, along with all funds and revenues related to these programs, to METRO:

1. All park facilities and natural areas currently owned or operated by COUNTY, with the exception of Vance Park;

2. Glendoveer Golf Course;
3. Pioneer Cemeteries, and;
4. EXPO.
5. Any new acquisitions of natural areas by COUNTY, to be transferred

to METRO under this Agreement, shall be made with the joint concurrence of the COUNTY and METRO.

A complete list of all properties contemplated for transfer is attached and incorporated herein as Exhibit 1.

These programs, activities, and facilities shall henceforth be referred to in this agreement as the COUNTY FACILITIES, but, all said facilities other than any neighborhood parks identified in Exhibit 1 will be identified exclusively as Metro-operated Facilities to the public and to users of those facilities, effective January 1, 1994. METRO shall have full power and authority to organize, manage, and operate the COUNTY FACILITIES as METRO deems appropriate.

B. Maintenance of Effort

METRO agrees to exert its best efforts to operate and maintain the Expo Center, cemeteries, parks, recreation facilities, natural areas, established cultural and educational programs, natural and cultural resources, and all related appurtenances being transferred as part of this Memorandum of Understanding in a manner which assures sustainable and continuous public use, safety and enjoyment at a level at least equal to that maintained by the COUNTY prior to the transfer. Provided, however, that METRO may

suspend swimming or other water-related activities in Blue Lake Park whenever METRO determines that such a suspension would be prudent for health or safety reasons.

C. Real and Personal Property

1. Effective January 1, 1994, COUNTY shall transfer to METRO the right to beneficial use of all real and personal property comprising the COUNTY FACILITIES, including any personal property associated with the management or operation of the COUNTY FACILITIES. COUNTY shall not take any action with regard to the real property comprising the COUNTY FACILITIES that would interfere with management and operation of the COUNTY FACILITIES by METRO.

2. During PHASE I of this agreement, COUNTY shall provide Multnomah County Fleet and Electronics service to provide maintenance and upkeep on all equipment associated with the COUNTY FACILITIES. COUNTY shall provide a standard of maintenance and upkeep at least equal to the standard previously kept by COUNTY for said equipment. COUNTY shall bill METRO for the cost of such services, in the same manner and at the same rate as charged to other County areas for comparable services. At METRO'S option, such services and billing shall continue during PHASE II consolidation.

D. Contracts and Licenses

1. Effective January 1, 1994, COUNTY shall assign to METRO all contracts, permits, rental agreements, and licenses to which COUNTY is a party and which are assignable without the consent of other parties. After January 1, 1994, these contracts, permits, rental agreements, and licenses shall be subject to management and control by METRO.

2. Effective January 1, 1994, COUNTY shall assign to METRO all contracts, permits, rental agreements, and licenses to which COUNTY is a party, the assignment to be effective January 1, 1994, or upon obtaining the consent of the other parties thereto, whichever occurs later. Upon assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of METRO.

E. Multnomah County Recreation Fund

All funds less current obligations contained within the Multnomah County Recreation Funds generated by, or attributed to the COUNTY FACILITIES shall be transferred to METRO. COUNTY represents, and warrants, that all funds currently contained within the Multnomah County Recreation Fund are properly contained within that fund in full compliance with all applicable laws and regulations. By way of example and not as a limitation, transfer of funds under this agreement shall include the current balances of special trust funds held by the Parks Division, including the Blue Lake Outdoor Performing Arts Stage fund, the Oxbow Park Nature Center fund, the Willamina Farmer Trust Fund, and the Tibbetts Flower fund, provided, however, that those funds shall be used exclusively for their dedicated purposes, and in accordance with the terms of any applicable trust documents. The Natural Areas Acquisition and Protection fund shall remain the sole responsibility of Multnomah County.

F. Metro Regional Parks/Expo Fund

1. METRO shall establish a new recreation fund as part of the Metro budget, known as the Metro Regional Parks/Expo Fund. All funds formerly in the Multnomah County Recreation Fund shall be transferred to the Metro Regional Parks/Expo

Fund. All revenues generated by the COUNTY FACILITIES shall be placed within the Metro Regional Parks/Expo Fund, and shall be spent only on the operation, management, marketing, maintenance, and improvement of the COUNTY FACILITIES, including any overhead or central services charges which METRO attributes to the COUNTY FACILITIES for provision of services by METRO.

2. In no event shall METRO be required to fund and/or subsidize the COUNTY FACILITIES or the Metro Regional Parks/Expo Fund with funds from any other METRO program, activity, or fund, provided, however, that METRO may, in its sole discretion, transfer METRO funds to the COUNTY FACILITIES or the Metro Regional Parks/Expo Fund, whenever it determines that it is in the regional interest to do so. In the event that METRO does transfer METRO funds to the COUNTY FACILITIES on the Metro Regional Parks/Expo Fund, METRO may transfer such funds back to METRO whenever and in such a manner as it sees fit. METRO may charge a reasonable rate of interest for METRO funds transferred to the COUNTY FACILITIES or the Metro Regional Parks/Expo Fund. METRO may transfer funds from one COUNTY facility to another as it sees fit. However, no funds from any other Metro program, activity or fund shall be used for maintenance and operation of any neighborhood parks identified in Exhibit 1.

G. EXPO/Multnomah County Fair

1. EXPO shall be managed and operated by METRO by and through its Metropolitan Exposition-Recreation Commission, subject to whatever changes the Metro Council may from time to time make in the management, operation, or existence of its Metropolitan Exposition-Recreation Commission.

2. METRO shall implement the EXPO master plan, dependent upon METRO's determination of the availability of resources to implement the plan.

3. Multnomah County represents and warrants to METRO (a) that the current arrangements surrounding the Multnomah County Fair, the Multnomah County Fair Board, and Multnomah County, which, inter alia, require the Fair to pay a fee for the use of EXPO, are lawful, proper, and in full compliance with the provisions of any agreements, deeds, duties, or contracts, express or implied, which exist regarding the Fair or EXPO, and (b) that Multnomah County has full authority to enter into this Memorandum of Understanding and any subsequent intergovernmental agreements insofar as EXPO and the Multnomah County Fair are concerned. The provisions of Section L(1) shall include any claims made by or on behalf of the Multnomah County Fair, the Multnomah County Fair Board, any users of the Fair, or any parties claiming contractual rights, including claims of any third party beneficiaries, with respect to EXPO, the Fair or the COUNTY'S actions with respect to EXPO or the Fair. The Multnomah County Fair shall continue to be the sole and exclusive responsibility of COUNTY. METRO shall continue to make EXPO space and expertise available for the Multnomah County Fair, through a contract(s) with the Multnomah County Fair Board. COUNTY may specify the dates for the fair.

4. Both the COUNTY and METRO recognize the value of the County Fair to the community and are committed to the future success of the County Fair. Based on its historical relationship to the Expo Center, special considerations may be granted to the Multnomah County Fair, upon the joint concurrence of both the COUNTY and METRO.

Continuation of such special considerations shall be jointly reviewed by the COUNTY and METRO within three years of the transfer of COUNTY FACILITIES.

H. Park Facilities, Cemeteries, Natural Areas, and Glendoveer Golf Course

All park facilities, natural areas, cemeteries, and golf courses transferred pursuant to this Memorandum of Understanding shall be incorporated into a new Metropolitan Parks and Greenspaces Department, to be established, operated, and managed by METRO; provided, however, that these facilities may be combined for operations purposes with other programs, projects, or operations, as determined to be appropriate by METRO, provided that METRO shall notify COUNTY prior to any major realignments or reorganizations.

I. Personnel

All staff presently budgeted in the County Recreation Fund shall be transferred to METRO pursuant to ORS 236.610 et seq. METRO agrees that all COUNTY employees transferred to METRO by this agreement shall be held harmless from any layoffs or reductions in force directly related to the City of Portland/METRO/OAC agreement. All COUNTY employees transferred to METRO by this Memorandum of Understanding shall be permitted to transfer any accrued vacation time and any accrued sick time with them to METRO. COUNTY shall be responsible for any obligations which might exist with respect to accrued compensation time. COUNTY shall pay to METRO an amount determined to be the cash equivalent of the amount of vacation leave transferred by each employee. METRO shall provide space in its new Metro Regional Center for the Parks administrative staff transferred as part of this Memorandum of Understanding. This Memorandum of

Understanding is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than METRO and COUNTY. This Memorandum of Understanding shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever. It is the specific intention of the COUNTY and METRO that the rights of any employees transferred under this Memorandum of Understanding shall be governed exclusively by ORS 236.610 to 236.650 and adjudicated via the procedures provided by those statutes and no other.

J. User Fees

METRO shall have the sole responsibility and authority to set user fees for any or all of the COUNTY FACILITIES except that METRO shall not increase user fees for COUNTY FACILITIES prior to July 1, 1994, without the joint agreement of the COUNTY and METRO.

K. Excise Tax

METRO shall have the sole responsibility and authority to exact an excise tax on all programs and activities comprising, or taking place at, the COUNTY FACILITIES, except that METRO shall not increase or impose such an excise tax prior to July 1, 1994, without the joint agreement of the COUNTY and METRO. Any excise tax receipts shall not be restricted to the benefit of the COUNTY FACILITIES, but shall be used for any public purpose deemed appropriate by METRO.

L. Indemnification

1. COUNTY, to the maximum extent permitted by law and subject to and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend,

indemnify and save harmless METRO, the Metropolitan Exposition-Recreation Commission, and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place prior to January 1, 1994, arising from the operations of the County Facilities.

2. METRO, to the maximum extent permitted by law, subject to and within the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, shall defend, indemnify and save harmless COUNTY, and its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits and actions, whether arising in tort, contract, or by operation of any statute, including the Workers' Compensation laws, 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 that takes place on or after January 1, 1994, arising from the operations of the COUNTY FACILITIES by METRO or Metro ERC. Provided, however, that during PHASE I of this Agreement, METRO'S duties of indemnification and defense shall be limited to the amount transferred by COUNTY to METRO as provided in subsection I(F)(1).

3. The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit and protection of METRO, Metropolitan Exposition-Recreation Commission, and COUNTY, and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any

person or person other than METRO, COUNTY, and their respective officers, employees, and agents.

M. County Ordinances/Services

1. All COUNTY resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the COUNTY FACILITIES in force and effect on September 1, 1993, shall remain in force and effect with regard to the COUNTY FACILITIES until superseded or repealed by any ordinance, resolution, executive order, procedure or rule duly adopted or promulgated by METRO, subject, however, to any restrictions contained in paragraphs J and K. In the case of EXPO, METRO may delegate its authority to supersede or repeal previous COUNTY directives to the Metropolitan Exposition-Recreation Commission. COUNTY shall cooperate and assist METRO in the implementation of any METRO action to supersede or repeal previous COUNTY directives that may require COUNTY action to amend COUNTY ordinances.

2. METRO shall have full power and authority to enforce any COUNTY ordinances, resolutions, executive orders, procedures, or rules governing, restricting, or regulating the use of the COUNTY FACILITIES, to the full extent that COUNTY possesses such authority. In the case of EXPO, METRO may delegate its enforcement authority to the Metropolitan Exposition-Recreation Commission.

3. Notwithstanding any other provisions herein, COUNTY shall continue to provide any health-related or law enforcement services that it has previously provided to the COUNTY FACILITIES, including but not limited to the provision of inmate labor services, in at least the same manner and to the same extent that such services were provided

prior to transfer. COUNTY may bill METRO for the cost of such services only to the extent that COUNTY bills other COUNTY programs for the cost of such services. In addition, the COUNTY shall continue to pay property assessments on COUNTY FACILITIES and shall continue its annual contribution to the Oregon Historical Society, for the operation of the Bybee-Howell House, until implementation of PHASE II (transfer of ownership). Provided, however, that METRO shall pay the impending sewer assessment and property taxes for Glendoveer Golf Course out of the County Recreation Funds transferred to METRO.

N. Transition Team

To ensure a smooth transition of services, a transition team will be established consisting of the Director of Environmental Services from Multnomah County, the Deputy Executive Officer of METRO, and the Manager of the Metro ERC facilities. This team will be responsible for information sharing among the agencies, resolution of minor contract disputes, and coordination of services. This transition team will meet as needed until PHASE II of this Agreement.

O. Reporting Requirements.

METRO shall provide the Director of Environmental Services with a written report on activities within the COUNTY FACILITIES on a quarterly basis. This report shall include a financial status on the COUNTY programs, a summary of activity level at each facility, and a brief narrative of unusual or important issues or situations that have occurred during the reporting period. This report is due to the COUNTY no later than October 25, January 25, April 25 and July 25.

In addition, METRO shall advise the Director of Environmental Services in writing immediately in the event of fee changes, ordinance revisions, significant organizational changes within COUNTY programs, and/or major changes in policy which affect COUNTY FACILITIES or programs.

P. Termination.

The parties shall negotiate a mutually agreeable termination procedure in the intergovernmental agreement which the parties' intend to enter into, based on this Memorandum of Understanding.

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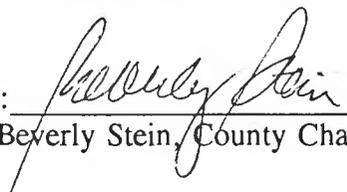
II. PHASE II CONSOLIDATION

Effective no later than July 1, 1996, COUNTY shall transfer to METRO full ownership of those of the above facilities which METRO has determined are public cultural, trade, convention, exhibition, sports, entertainment, or spectator facilities, or parks, open spaces, or recreational facilities of "metropolitan concern," provided that, at METRO'S option, transfer may be delayed pending acquisition by METRO of an appropriate regional funding base. Neighborhood parks identified in Exhibit 1 are intended to be transferred to the City of Portland during Phase I. Any such parks not transferred shall remain in COUNTY ownership. Effective no later than July 1, 1996, the provisions of PHASE I CONSOLIDATION shall no longer apply, except for those provisions which by their specific terms go beyond PHASE I.

APPROVED AS TO FORM


Multnomah County Counsel

MULTNOMAH COUNTY

By: 
Beverly Stein, County Chair

APPROVED AS TO FORM


Metro General Counsel

METRO

By: _____
Rena Cusma,
Executive Officer

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APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-12 DATE 10/14/93
DEB BOGSTAD
BOARD CLERK